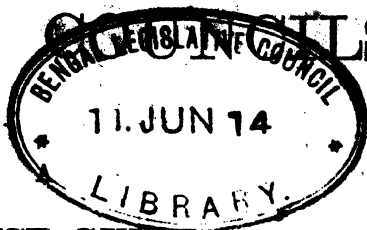


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DISTRICT MAGISTRATES



CONCISE GUIDE

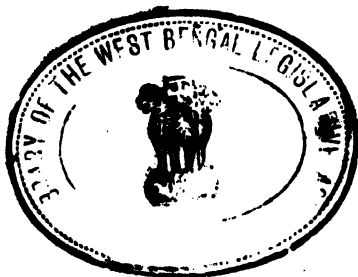
TO

THEIR POWERS AND DUTIES.

BY

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LONDON:

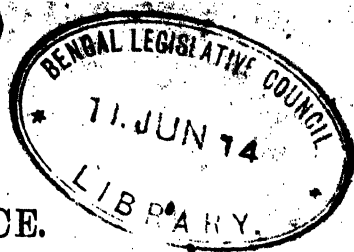
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PREFACE.

My object in compiling the following pages has been to compress into as small a space as practicable the multifarious powers and duties of a district council as the sanitary, highway, and local government authority. The book will, I hope, form a concise guide for the use of members and officers of district councils, and also serve the purpose of a convenient reference for members of the legal profession. The subjects are arranged in alphabetical order, which is, perhaps, the most convenient form in a work of this kind; and, as far as possible, kindred subjects have been grouped under one heading. Two matters with which I have dealt very briefly are the powers and duties of a district council (a) under the Unemployed Workmen Act, 1905, and (b) when in the position of a local education authority under the Education Act, 1902. The Unemployed Workmen Act will expire this year unless given a fresh lease of life by the Legislature; and the law of education is too large and special a subject to come within the scope of such a book as this.

H. D. C.

FARRAR'S BUILDING, TEMPLE,
February, 1908.

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DISTRICT COUNCILS.

Acquisition of Land.

THE district council may, for the purposes of the Public Health Acts or for highway purposes (s. 95, P. H. Act, 1907), purchase, take on lease, sell or exchange land. They may also buy up a water-mill, dam, or weir which interferes with the proper drainage of, or the water supply to, their district. (S. 175, P. H. Act, 1875.) The council can also, with the consent of the L. G. B., let any land that can be conveniently spared. (S. 177, P. H. Act, 1875.)

When lands are purchased by the council the purchase will be in accordance with the provisions of the Lands Clauses Acts which are incorporated by section 176 with the P. H. Act. But if compulsory powers of purchase are required by the council, then the following regulations must be observed:—

The council must publish once in each of three consecutive weeks in the month of November (*see post*), in some local newspaper circulating in the district, an advertisement stating the nature of the undertaking for which the lands are proposed to be taken, the quantity of lands required, and also where a plan of the proposed undertaking may be inspected. Further, notice must be served in December on every owner or reputed owner, lessee, and occupier. The notice must define the particular lands intended to be taken, and must require an answer stating whether the person so served assents, dissents or is neutral in the matter of the lands being taken.

When these preliminaries have been completed, the council may present a petition under their seal to the L. G. B. that the

council may be allowed to put into force the compulsory powers of purchase of those lands under the Lands Clauses Consolidation Acts. The petition must state the lands intended to be taken, the purposes for which they are required, the names of the owners, &c., and their views as to the proposed taking of the land.

N.B.—The L. G. B. has issued a memorandum containing instructions as to the presenting of this petition which should be observed. In this memorandum the Board declares that two or more local authorities cannot jointly present a petition. A separate petition must be presented by each in respect of the particular lands required by each, or else the several authorities must combine under s. 285, P. H. Act, 1875 (p. 79), and a petition be presented by one of them with regard to all the land required.

On receipt of petition the L. G. B. can hold a local inquiry, and may by Provisional Order empower the council to exercise these compulsory powers of purchase. The council must serve a copy of the Order on all those persons on whom the notice was served.

By way of proviso it is enacted that the notices required to be served in November and December may be served in September and October or October and November, but in either case the L. G. B. inquiry cannot be held for one month after the last day of the second of the two months in which the notices are given.

When a number of persons have a right in common in or over any lands the notice and copy of Order may be served on any three on behalf of all. (S. 176, P. H. Act, 1875.)

Lands which have been purchased under the Act and are not required for the purposes for which they were acquired must be sold by the council, unless the L. G. B. directs otherwise.

The price obtained must be applied towards the discharge of any principal moneys which have been borrowed on the security of the district fund or rate; or, if there is no such debt outstanding, it must be carried to the account of the district fund in relief of the rates. (S. 175, P. H. Act, 1875.)

Land which has been acquired for one purpose under this section cannot be *permanently* applied to another purpose; and

the L. G. B. has no power to authorize any such departure. (*A.-G. v. Hanwell U. D. C.*, (1900) 2 Ch. 377; 69 L. J. Ch. 626.) But if any portion of the land so acquired is not immediately needed, the council may *temporarily* put it to some other use, provided that this will not prevent it from being ultimately used for the purpose for which the land has been acquired. (*A.-G. v. Teddington U. D. C.*, (1898) 1 Ch. 66; 67 L. J. Ch. 23.) In this case the council had set apart as a recreation ground a portion of the lands, which was not immediately wanted, which had been purchased for sewage works.

Land purchased under the Electric Lighting Acts for a generating station for supplying the district with electricity cannot be used (nor any part of it) for the purposes of the P. H. Act, *e.g.*, for the erection of a dust destructor. (*A.-G. v. Pontypridd U. D. C.*, (1905) 2 Ch. 441; 74 L. J. Ch. 716.)

In districts, however, where s. 95, P. H. Act, 1907, is in force, lands acquired by a council for a special purpose, and not required for that purpose, may be appropriated to any other purpose approved by the L. G. B., but subject to any special covenant or condition as to the use of the lands made at the time of their purchase and to any special provision in a local Act affecting their use. But the council must not, on lands so appropriated, create or permit a nuisance, nor sink a well for the public supply of water, nor construct a cemetery, burial ground, destructor, station for generating electricity, sewage farm, or hospital for infectious diseases, unless the L. G. B., after inquiry and consideration of any objections made by persons affected, authorize the work or construction. (S. 95.) But nothing in this section is to affect any rights acquired before it came into force in the district under any judgment or order of a Court, or under an agreement in writing. If a dispute arises under such an agreement as to a right, and one of the parties is a district council, the dispute must be settled, if either party so require, by the L. G. B. (S. 95, P. H. Act, 1907.)

N.B.—This section is only in force in districts to which it or Part X., P. H. Act, 1907, has been applied by Order of the L. G. B.

A district council on purchasing any property must within three months after the vesting of the property in the council or after the passing of the Act (*e.g.*, an Act confirming a Provisional Order) authorizing the purchase, whichever date is later, produce to the Inland Revenue Commissioners an instrument of conveyance or a copy of the Act stamped with the *ad valorem* duty payable upon a conveyance on sale of property. (S. 12, Finance Act, 1895.)

"Property" includes chattels, *e.g.*, electric cables, wires, &c. of an electric light undertaking as well as the land and buildings. (*A.-G. v. Eastbourne Corporation*, (1902) 1 K. B. 403; 71 L. J. K. B. 181.)

Adoptive Acts.

Certain Acts—the "Adoptive Acts"—only come into force in the district when adopted by the council. These Acts are the Baths and Washhouse Acts; the Housing of the Working Classes Act, 1890, Part III.; the Infectious Diseases Prevention Act, 1890; the Museums and Gymnasiums Act, 1891; the Private Street Works Act, 1892; the Public Libraries Acts; the Public Health Act, 1890; Notification of Births Act, 1907 (see as to the mode of adoption of this Act, NOTIFICATION OF BIRTHS).

In rural districts the following "Adoptive Acts"—the Lighting and Watching Act, 1833; the Baths and Washhouse Acts; the Burial Acts; the Public Improvements Act, 1860; and the Public Libraries Acts—can only be adopted exclusively by the parish meeting. (S. 7, L. G. Act, 1894.) The rural district council have no power to adopt these Acts; and none of these Acts may be adopted for any part of an urban district by a parish meeting without the approval of the district council. (S. 62, sub-s. 1, L. G. Act, 1894.)

N.B.—An urban council can adopt all or any of the Parts of the P. H. Act, 1890; but a rural district council can only adopt such sections of Part III. of the Act as are declared to be applicable to rural councils, unless the rural council are invested by the L. G. B. with urban powers in respect to Part. III.

With regard to the P. H. Act, 1907, the provisions of the Act will only be in force according as Parts II., III., IV., V., VI. and X. are declared to be in force in a district by Order of the L. G. B., and Parts VII., VIII., IX. by Order of a Secretary of State. (S. 2, P. H. Act, 1907.)

The L. G. B. or Secretary of State, as the case may be, on the application of a district council, may by Order declare any Part or section of the Act to be in force in the district, or, in the case of a rural district, in any contributory place. The Order can further declare that any provisions of a local Act which are inconsistent with this Act shall be no longer in force. Before applying for an Order, the council must give at least two weeks' notice of their intention to apply by means of advertisements published once at least in two successive weeks in one or more of the newspapers circulating in the district. No Order will be made until proof of such advertisement has been given to the satisfaction of the L. G. B. (or Secretary of State), and until one month after the date of such advertisement.

The Order may specify conditions and adaptations subject to which any Part or section is to be in force; and a statement of the effect of each Order specifying conditions or adaptations must be published in the London Gazette as well as in any other manner directed by the L. G. B. (or Secretary of State). (S. 3, P. H. Act, 1907.)

The typical mode of adopting an Adoptive Act is prescribed by s. 3, Infectious Diseases Prevention Act, 1890 :—

Adoption must be by means of a resolution passed at a meeting of the council.

Fourteen clear days at least before the meeting, special notice of the meeting, and of the intention to propose such resolution, must be given to every member.

This notice is to be deemed to have been duly given if it is either—(a) given in the mode in which notices to attend meetings of the council are usually given; or (b) where there is no such mode, then signed by the clerk and delivered to the member or left at his usual or last-known place of abode in England, or forwarded by post in a prepaid letter addressed to

the member at his usual or last-known place of abode in England.

Every such resolution must be published by advertisement in a local newspaper, and by handbills and otherwise as the council think sufficient for giving notice to all persons interested.

The resolution will come into operation at such time, not less than one month after the first publication of the advertisement of the resolution, as the council fix; and thereupon the Act or the sections of it adopted by the council will extend to the district.

A copy of the resolution must be sent to the L. G. B.; but in the case of the adoption of Part II. (relating to Telegraph Wires) of the P. H. Act, 1890, the copy of the resolution is to be sent to the Board of Trade.

A copy of the advertisement is to be conclusive evidence of the resolution having been passed, unless the contrary is shown.

No objection on the ground that notice of intention to propose the resolution was not duly given or that the resolution was not sufficiently published can be taken to the adoption after three months from the date of the first advertisement.

Allotments.

On a representation in writing being made to an urban district council (in rural districts the parish council is the authority) that allotments are required and that allotments cannot be obtained at a reasonable rent by voluntary arrangement between landowners and the applicants, the council must purchase or hire the land required and let it out in allotments to persons belonging to the labouring classes.

The representation must be made to an urban council by any six registered Parliamentary electors or ratepayers resident in the district, and to a parish council by six registered Parliamentary electors or ratepayers resident in a parish.

"Reasonable rent" means the rent, exclusive of rates, taxes, and tithes, which a person taking an allotment might be expected to pay, having regard to the value of similar land in the neighbourhood, the situation and extent of the allotment,

ALLOTMENTS.

the outgoings payable by the landlord, and the cost and risk of collecting rents and of management. (S. 2, Allotments Act, 1887.)

The persons making and entitled to make the above representation may appeal to the County Council if the district council fail to give effect to their representation or to provide a sufficient number of allotments; and the County Council can, thereupon, transfer to themselves the district council's powers under the Act and exercise them at the district council's expense. (Allotments Act, 1890.)

The Board of Agriculture can transfer the County Council's powers to the Small Holdings Commissioners if the County Council fail to act. (S. 24, Small Holdings and Allotments Act, 1907.)

Land is not to be acquired by a district council for allotments except at such a price or rent that the district council may reasonably expect the expenses to be recouped out of the allotment rents. (S. 2, Allotments Act, 1887.)

It is the duty of the County Council to ascertain the extent to which there is a demand for allotments in the urban districts (other than boroughs) and the rural parishes in the county, and to satisfy that demand, co-operating for the purpose with the local authorities concerned. (S. 24, Small Holdings and Allotments Act, 1907.)

N.B.—The powers and duties of rural district councils under the Allotments Acts are transferred to the parish council, or where there is no council to the parish meeting, by the Small Holdings and Allotments Act, 1907. All property acquired and all liabilities incurred by a rural district council under these Acts are to pass to the council of the parish (or parish meeting) in respect of which the property was acquired or the liabilities incurred. The transfer will take place from a day to be appointed by the L. G. B., and the adjustment of property and liability will be settled in the mode provided by the L. G. Act, 1894. (S. 20, Small Holdings and Allotments Act, 1907.)

The district council need not provide allotments exceeding one acre in extent, but land exceeding five acres may be let or

adapted for letting as an allotment if the County Council are satisfied that it is desirable and give their consent. (S. 21, Small Holdings and Allotments Act, 1907.)

The council can acquire land to be used and let out for pasture (s. 12, Allotments Act, 1887), and in addition to this, the council have power to acquire land for the purpose of attaching to allotments provided by the council rights of grazing over the land, and also stints and other alienable common rights of grazing. (S. 31, Small Holdings and Allotments Act, 1907.)

N.B.—A “small holding” is defined by the Act to mean an agricultural holding which exceeds one acre, and either does not exceed fifty acres, or, if exceeding fifty acres, is at the date of sale or letting of an annual value for the purpose of income tax not exceeding 50%. (S. 46, Small Holdings and Allotments Act, 1907.) The distinction between an “allotment” and a “small holding” is not at all clear, but it must be inferred from the provision in s. 21 of the Act which prohibits one tenant from holding an “allotment” exceeding five acres. District councils have no power to provide “small holdings” unless an arrangement is made by the County Council and the district council that the County Council’s powers in the matter shall be exercised by the latter as the agents of the County Council. (S. 15, Small Holdings and Allotments Act, 1907.)

The County Council can sell or let to an urban district council for the purpose of allotments any land acquired for small holdings. (S. 32, Small Holdings and Allotments Act, 1907.)

An incumbent can lease glebe land to the council with the consent of the Ecclesiastical Commissioners. The lease must not be for a term exceeding thirty-five years. (S. 28, Small Holdings and Allotments Act, 1907.)

If a council are unable to acquire land by agreement and on reasonable terms under the Allotments Acts, they may acquire land compulsorily in the manner provided by this Act. (S. 22, Small Holdings and Allotments Act, 1907.)

When the council propose to purchase land compulsorily, they may submit to the Board of Agriculture an Order for putting into force the provisions of the Lands Clauses Acts with respect

to compulsory purchase. The Order must be in accordance with the provisions of Part I. of Schedule I. of the Act, and the acquisition of the land will be carried out accordingly.

When the council propose to hire land compulsorily, they must submit to the Board of Agriculture an Order for the compulsory hiring. The provisions of Part I. of Schedule I. will apply to this Order with the necessary modifications and with the modifications set out in Part II. of Schedule I. The period proposed in an Order for compulsory hiring must not be less than fourteen nor more than thirty-five years.

An Order must be confirmed by the Board of Agriculture. (S. 26, Small Holdings and Allotments Act, 1907.)

The council, when they have hired land compulsorily, may renew the tenancy on giving the landlord not more than two years' nor less than one year's notice before the expiration of the tenancy. The period for which the renewal of the tenancy is required must be specified in the notice, and must be for a period not less than fourteen nor more than thirty-five years. The rent to be paid for the renewed tenancy is, in default of agreement, to be settled by a valuer appointed by the Board. But if the landlord, on receipt of this notice satisfies the Board of Agriculture that the land is required for the amenity or convenience of any dwelling house, the tenancy is not to be renewed.

With the exception of the rent, the conditions of the renewed tenancy are to be the same as those of the original lease. (S. 27, Small Holdings and Allotments Act, 1907.)

If, when the amount of compensation payable, or, in the case of compulsory hiring, the rent payable, has been determined, it appears to the council that the land proposed to be acquired cannot be let for allotments or small holdings at such a rent as will secure the council from loss, they may at any time within six weeks from the determination of the amount payable by them, give notice in writing to the persons interested in the land, withdrawing the notice to treat. Persons on whom this notice of withdrawal must be served must be compensated for any loss or expense incurred in consequence. The compensation must be settled by arbitration in case of dispute. (S. 26, Small Holdings and Allotments Act, 1907.)

No land can be acquired compulsorily which forms part of a

park, garden, or pleasure ground, or forms part of the home farm attached to and usually occupied with a mansion house; or which is otherwise required for the amenity or convenience of a dwelling-house; or which is woodland not wholly surrounded by or adjacent to land acquired by the council; or which is the property of any local authority; or which has been acquired by any corporation or company for the purposes of a railway, dock, canal, water, or other public undertaking; or which is the site of an ancient monument or other object of archaeological interest.

The council, in making an Order for compulsory acquisition, must have regard to the extent of land held or occupied in the locality by an owner or tenant, and must avoid, as far as practicable, taking an undue quantity of land from any one owner or tenant. The council must also take into consideration the size and character of agricultural buildings not proposed to be taken on the holding, and the quality and nature of the land available for occupation with these buildings. They must also avoid displacing any considerable number of agricultural labourers or others employed on the land.

No holding of fifty acres or less in extent, nor any part of such holding, can be acquired compulsorily for the purposes of allotments or small holdings. (S. 30, Small Holdings and Allotments Act, 1907.)

When land has been hired compulsorily by the council, the landlord, on satisfying the Board of Agriculture, at any time during the tenancy, that he requires the land for building, mining, or other industrial purposes, or for roads necessary for these purposes, can resume possession of the land or such part as he requires on giving the council twelve months' notice in writing. If a part only of the land is resumed, the rent payable by the council in respect of the rest of the land must, in default of agreement, be determined by a valuer appointed by the Board of Agriculture. (S. 33, Small Holdings and Allotments Act, 1907.)

The district council can improve land acquired by them and adapt it for letting in allotments, by draining, fencing, and dividing the land, and making roads and approaches to it. (S. 5, Allotments Act, 1887.) The council can also erect

buildings and make adaptations of existing buildings, but so that not more than one dwelling-house shall be erected for occupation with any one allotment; and no dwelling-house must be erected for occupation with an allotment of less than one acre. (S. 21, Small Holdings and Allotments Act, 1907.)

N.B.—Sub-s. 5 of s. 7 of the 1887 Act, which prohibited tenants from erecting buildings other than tool-sheds, pig-sties, &c., is repealed by s. 35 of the 1907 Act.

Regulations, to be confirmed by the L. G. B., may be made for the management and letting of the allotments, the conditions under which they are to be cultivated, the rent to be paid, &c. A copy of the regulations must be given gratis to any inhabitant of the district or parish demanding the same.

N.B.—The L. G. B. has published model regulations.

- The council can appoint (and remove) allotments managers. These managers may consist wholly of members of the council or partly or wholly of residents and ratepayers in the district. The council can prescribe the proceedings and powers of the managers, who may be empowered to incur expenses on behalf of the council to such amount as the council authorize. (S. 6, Allotments Act, 1887.)

The management of allotments and field gardens vested in allotments wardens by the Inclosure Acts may, with the sanction of the Board of Agriculture, be transferred by them to the district (in rural districts to the parish) council. (S. 13, Allotments Acts, 1887.)

When the council provide pasture land they can charge a rent for the animals turned out on the pasture, and they may by their regulations define who are the persons entitled to put animals on the pasture, the number of animals and the conditions under which they are to be put on the pasture. (S. 12, Allotments Act, 1887.)

The council must keep a register of tenancies showing particulars of the tenancies, the acreage and rent of the allotments let and unlet. (S. 15, Allotments Act, 1887.)

Superfluous land acquired for allotments or land which is unsuitable for allotments may, with the sanction of the County Council, be sold by the district council or exchanged for suitable

land. The proceeds of the sale, or any money received on an exchange of land by way of equality of exchange, must be applied in defraying the expenses of the allotments or in acquiring or improving other land for allotments. (S. 11, Allotments Act, 1887.)

Five acres are the limit of the amount of land which one person may hold as an allotment. (S. 21, sub-s. 1.) But the council can let one or more allotments to persons working on a co-operative system, or to an association formed for the purpose of promoting the creation of allotments. (S. 21, sub-s. 3, Small Holdings and Allotments Act, 1907.)

The rent to be fixed by the council shall be such as may be reasonably expected to insure them from loss; but in calculating this loss any expenses incurred in an unsuccessful attempt to acquire land are to be excluded. Regard, too, must be had to the agricultural value of the land. Not more than a quarter's rent shall be required to be paid in advance if, indeed, the council require payment of rent in advance.

For the purpose of rates, taxes and tithe rent-charge the district council are to be deemed to be the occupiers of the allotments, but the amounts so paid are to be certified to the tenants, apportioned among them, and added to the rent payable by them to the council. But for the purposes of the Parliamentary or other franchise the tenants are to be deemed to be the occupiers of the allotments. (S. 7, Allotments Act, 1887.)

If any allotment cannot be let in accordance with this Act or the regulations of the council, it may be let to any person who is willing to take it for the best annual rent, provided the council can resume possession of it within twelve months if it should be required.

A tenant before the expiration of his tenancy may remove any fruit or other trees and bushes planted or acquired by him, for which he has no claim for compensation. (S. 7, Allotments Act, 1887.)

Compensation is payable by the council to the tenant of an allotment on the termination of the tenancy for the following improvements mentioned in paragraph (27) (i), (ii), (iii) and

(iv) of the First Schedule to the Agricultural Holdings Act, 1900:—(i) Planting of standard or other fruit trees permanently set out; (ii) planting of fruit bushes permanently set out; (iii) planting of strawberry plants; (iv) planting of asparagus, rhubarb, and other vegetable crops which continue productive for two or more years.

The tenant, however, is not entitled to compensation in respect of any such improvement if executed contrary to an express prohibition in writing by the council; but the tenant can appeal against such prohibition to the Board of Agriculture.

The tenant of an allotment may, if he so elects, claim compensation for improvements under the Allotments and Cottage Gardens (Compensation for Crops) Act, 1887, instead of under the Agricultural Holdings Acts, notwithstanding that his allotment exceeds two acres.

Compensation is payable by the landlord to the council on quitting at the end of the tenancy land which they have hired for allotments, unless there is an agreement to the contrary. This compensation is payable for any improvements mentioned in paragraph 27 (i), (ii), (iii), (iv), *supra*, effected by the council, and also for any improvement mentioned in Part I. or Part II. of the First Schedule to the Agricultural Holdings Act, 1900, which was necessary or proper to adapt the land for allotments.

Any improvements mentioned in Part I. or Part II. can be made by the council without the consent of or notice to the landlord. The improvements mentioned in Part I. are (i) erection, alteration or enlargement of buildings; (ii) laying down of permanent pasture; (iii) making of gardens; (iv) making or improving of roads or bridges; (v) making or improving of ponds, water-courses, &c.; (vi) making or removal of permanent fences; (vii) planting of orchards; (viii) reclaiming waste lands, &c. The improvement mentioned in Part II. is drainage.

In the case of land hired compulsorily by the council, the amount of compensation payable to the council for these improvements is to be a sum as fairly represents the increase (if any) in the value to the landlord and his successors in title

of the holding due to the improvements. (S. 35, Small Holdings and Allotments Act, 1907.)

For the purpose of recovering the rent and possession of an allotment, the district council have the same remedies as any other landlord.

If the rent is in arrear for more than forty days, or, if after three months of the tenancy, it appears to the council that the tenant has not observed the regulations, or if the tenant resides more than one mile outside the district or parish for which the allotments are provided, the council can give him one month's notice determining his tenancy.

This notice must be in writing, must be served on him personally, or, if he resides outside the district or parish, it must be left at his last known place of abode in the district or parish, or fixed in some conspicuous manner on the allotment. But in every such case, in default of agreement between the incoming and outgoing tenant, the council must pay the compensation due to him. This compensation is to be assessed by an arbitrator appointed by the council, or, if the tenant so elect, either by an arbitrator appointed under the Allotments and Cottage Gardens (Compensation for Crops) Act, 1887, or by a reference under the Agricultural Holdings Act, 1883. (S. 8, Allotments Act, 1887.)

Within one month after the 25th March in each year a statement of the receipts and expenditure under this Act must be made by the council and be open to the inspection of the ratepayers. (S. 15, Allotments Act, 1887.)

Separate accounts must be kept of the receipts and expenditure of the council, of their officers, and of the allotment managers and other persons acting under this Act. These accounts will be audited as the council's other accounts are audited, and the accounts of the allotment managers will be audited as the accounts of the council's officers are audited.

All expenses, in so far as they are not covered by the allotment rents, are to be defrayed in an urban district as part of the general expenses.

All receipts, other than by the sale or exchange of lands, must be applied to payment of the expenses incurred in respect of the allotments, and any surplus revenue from the allotments

must be applied in aid of the expenses. (S. 10, Allotments Act, 1887.)

The council can borrow money, as under the P. H. Act, 1875, for the purpose of acquiring, improving, or adapting land for allotments. (S. 10, Allotments Act, 1887.)

Ambulance.

In districts where s. 50 of Part III., P. H. Act, 1907, is in force, the council may provide and maintain an ambulance for use in case of accident, also suitable attendants, means of traction and other requisites. The council may allow the ambulance to be used by any other local authority or person subject to such terms and conditions as may be agreed upon.

Arbitration.

The P. H. Act, 1875, provides that the following matters are to be referred to arbitration :—

- (a) A dispute between the council and the owner or occupier of premises outside the district as to the terms and conditions under which the drains of these premises may be connected with the council's sewers. (S. 22.)
- (b) Questions between a water company and a district council proposing to supply water in the company's limits of supply as to whether the company are able and willing to lay on a sufficient supply and whether the purposes for which the council require the water are reasonable. (S. 52.)
- (c) Difference as to the times and conditions under which a district council shall undertake to supply water to an adjoining district. (S. 68.)
- (d) Dispute as to the apportionment of paving expenses among frontagers. (S. 150.)
- (e) Dispute as to the amount of compensation to be paid for setting back a building. (S. 155.)
- (f) Dispute as to the amount of compensation payable on account of damage done in the exercise of the council of their powers. (S. 308.)

- (g) Questions whether proposed works by the council will injure rivers, canals, docks, &c. (S. 328.)
- (h) Questions whether the council in exercising their powers under this Act have injuriously affected any water supply. (S. 333.)

N.B.—With regard to (g), if the arbitrators are of opinion that no injury will be caused, the council can forthwith proceed with the proposed works; if they are of opinion that injury will be caused, but that the injury is of such a nature as to admit of being fully compensated for, the council can only proceed with the work on payment of the compensation assessed; if they are of opinion that injury will be caused and that it will not admit of being compensated by money, the council must not proceed with the work. (S. 329, P. H. Act, 1875.)

If the amount in dispute, or the compensation claimed, does not exceed 20%, the matter may, at the option of either party, be determined by a Court of summary jurisdiction. (S. 181, P. H. Act, 1875.)

When any matter is directed to be settled by arbitration under the P. H. Act, 1875, unless both parties concur in the appointment of a single arbitrator, each party must appoint an arbitrator, to whom the matter must be referred. (S. 179, P. H. Act, 1875.) But when, however, the mode of determining a question is otherwise specially provided for—*e.g.*, the compulsory purchase of land by a district council is governed by s. 176, P. H. Act, 1875, which incorporates for that purpose the provisions of the Lands Clauses Acts—the question will be determined accordingly. (S. 179, P. H. Act, 1875; and *Rayner, Ex p.* (1878), 3 Q. B. D. 446; 47 L. J. Q. B. 660.)

S. 180, P. H. Act, 1875, contains regulations as to arbitrations under the P. H. Act:—

The appointment of an arbitrator by a district council must be under their seal.

The appointment must be delivered to the arbitrators, and when delivered amounts to a submission to arbitration.

An appointment when made cannot be revoked without the

consent of both parties ; the death of a party will not operate as a revocation.

When one party has appointed an arbitrator and has given written notice to the other party stating the matter to be referred to arbitration, accompanied by a copy of the appointment, if this other party, after fourteen days from the giving of the notice, fails to appoint an arbitrator, the single arbitrator appointed by the party giving the notice shall act for both.

If before the determination of the matter referred an arbitrator dies, or refuses to act, or becomes unable to act, the party who appointed him may appoint in writing another person in his stead ; but if such party fails to do so within seven days after written notice in that behalf from the other party, the remaining arbitrator may act alone.

.If a single arbitrator dies, or is unable to act before the making of his award, or fails to make his award within twenty-one days after his appointment, or within such extended time as may have been appointed by him for that purpose, the reference to arbitration must be made *de novo*.

Where there are two arbitrators, they must, before they enter on the reference, appoint an umpire. If they fail to make this appointment within seven days after being requested to do so by either party, the L. G. B., on the application of either party, can appoint an umpire.

The umpire must determine the matter referred if the arbitrators fail to make their award within the twenty-one days or in the extended time. In no case must this extended time exceed two months from the date of the submission ; nor, if the award is made by the umpire, must it be extended beyond the period of two months from the date when the matter was referred to him.

N.B.—This regulation does not curtail the powers of the Court or a judge under s. 9, Arbitration Act, 1889, to extend the time beyond these limits. (*Knowles v. Bolton Corporation*, (1900) 2 Q. B. 253 ; 69 L. J. Q. B. 481.)

The arbitrator or umpire can require either party to produce documents, and may examine the parties and their witnesses on oath.

The costs of the reference are in his discretion.

The award is final and binding on all parties to the reference. (S. 180, P. H. Act, 1875.)

N.B.—Though there is no appeal from the award, the Court or a judge may from time to time, on the application of either party, remit the matters referred, or any of them, to the arbitrator or umpire for reconsideration (s. 10, Arbitration Act, 1889); and where an arbitrator has misconducted himself, the Court may remove him, or if the award has been improperly obtained, may set it aside. (S. 11, Arbitration Act, 1889.) Arbitrators or an umpire may at any stage of the proceedings, and must, if so directed by a Court or judge, state in the form of a special case for the opinion of the Court any question of law arising in the course of the reference. (S. 19, Arbitration Act, 1889.)

When the arbitration is as to the amount of money payable to the district council, *e.g.*, the amount payable by a frontager in respect of his share of paving expenses in making up a private street, the council to enforce the award must proceed summarily under s. 257, P. H. Act, 1875, or in the County Court under s. 261. The award cannot be enforced under s. 12, Arbitration Act, 1889. (*Re Willesden L. B. and Wright*, (1896) 2 Q. B. 412; 65 L. J. Q. B. 567.) With regard to other matters, it is submitted that s. 12, Arbitration Act, 1889, applies to the enforcement of an award.

If damage is caused to any person by the district council in the exercise of their powers, full compensation must be paid to him by the council, provided that the damage was not caused by any default on the claimant's part. Any dispute as to the fact of damage or as to the amount of compensation payable must be settled by arbitration. (S. 308, P. H. Act, 1875.)

Compensation payable under the P. H. Act, 1907, is to be determined in the mode above mentioned. (S. 10, P. H. Act, 1907.)

N.B.—The arbitrator can inquire into the facts of damage being done and of its being due to the claimant's default; and it is open to the council when an unfavourable award has been made to contest their liability on any grounds when proceedings

are taken to enforce the award. (*Brierley Hill L. B. v. Pearsall* (1884), 9 A. C. 595; 54 L. J. Q. B. 25.) Where arbitrators had been appointed to settle the compensation payable by the council to a land-owner for damage to be caused by carrying a sewer through her land, but before any work had been begun the council decided not to execute it—it was held that an award giving the land-owner her costs which she had incurred was bad. But the Court further held that she was not thereby debarred from claiming compensation for the expense she had been put to by the notice of the intention to make the sewer in her land. (*Davis v. Witney U. D. C.* (1899), 15 T. L. R. 275.)

“Full compensation.”—These words include the pecuniary loss which a man suffers when he is not in default, including the expense of witnesses whom he has called to prove that he is not in default. (*Re Bater and the Birkenhead Corporation*, (1893) 2 Q. B. 77; 62 L. J. M. C. 107.) In this case meat had been seized as unfit for food, but the justice had refused to order its destruction on being satisfied by Bater and his witnesses that it was not unsound.

In another meat seizure case it was held that the arbitrator could include in the “full compensation” the costs incurred in opposing a summons under s. 117, P. H. Act, 1875. (*Walshaw v. Brighouse Corporation*, (1899) 2 Q. B. 286; 68 L. J. Q. B. 828.)

But the difference between the taxed costs and the costs actually incurred by a person defending proceedings taken against him by the local authority to abate a nuisance cannot be so recovered. (*Barnett v. Eccles Corporation*, (1900) 2 Q. B. 423; 69 L. J. Q. B. 834.)

Where the council had carried a sewer into the plaintiff's lands in accordance with the powers under s. 16, P. H. Act, 1875, it was held that he was not entitled to compensation for the depreciation of his property caused by the proximity of a pumping station erected on adjoining land (not his property) in connection with the sewer. (*Horton v. Colwyn Bay U. D. C.*, (1907) 1 K. B. 14; 76 L. J. K. B. 91.)

Audit of Accounts.

The accounts of urban district councils (s. 247, P. H. Act, 1875) and of rural district councils (s. 58, sub-s. 2, L. G. Act, 1894) must be audited in the case of an urban council, yearly (s. 247, P. H. Act, 1875), and in the case of a rural district council, half-yearly (s. 58, sub-s. 2, L. G. Act, 1894), by a district auditor appointed and paid by the L. G. B. (S. 4, District Auditors' Act, 1879.)

The accounts of urban councils, their committees and officers, must be made up to the 31st day of March; the accounts of rural district councils, to the 30th day of September and to the 31st day of March in each year, and in the form prescribed by the L. G. B. (S. 58, sub-s. 1, L. G. Act, 1894.)

The L. G. B., by Order of the 18th of April, 1903, has settled the form of, and the particulars to be contained in, the financial statement of expenditure and receipts of an *urban* district council.

The financial statement must be prepared and submitted in duplicate by the district council to the district auditor. The council must affix a stamp to one of the duplicate statements. The value of the stamp depends on the amount of the expenditure by the council. (Schedule I., District Auditors' Act, 1879.) At the conclusion of the audit, the auditor must cancel the stamp and certify on each duplicate the amount in words of the expenditure examined and allowed, and further, that the regulations with respect to such statement have been duly complied with, and that he has ascertained by the audit the correctness of the statement. He must then send the stamped duplicate thus certified by him to the L. G. B.; and in such case a return of receipts and expenditure under the Local Taxation Returns Acts, 1866 and 1877, need not be sent by the council unless the L. G. B. so requires. (S. 3, District Auditors' Act, 1879.)

Notice must be given by advertisement in the local newspapers by the district council at least fourteen days before the audit as to the fact that the audit will take place at the time and place specified in the notice, and that the council's accounts are deposited for inspection.

A copy of the accounts, duly made up and balanced, together with all rate books, account books, deeds, contracts, vouchers, and receipts mentioned in them, must be open for inspection during office hours, at the council's office, to all persons interested for seven clear days before the audit. Such persons may take extracts free of charge. (S. 247, P. H. Act, 1875.)

N.B.—In a rural district a parochial elector may at all reasonable times, without payment, inspect and make copies and take extracts from all books, accounts and documents belonging to or under the district council's control. (S. 58, sub-s. 5, L. G. Act, 1894.)

The auditor by summons in writing can require the production before him of any books, accounts, vouchers, &c. which he may deem necessary, and may require the person accountable for them to appear before him at the audit, or at an adjournment of the audit, and to make and sign a declaration as to their correctness. If such person refuses to produce any document or to make or sign the declaration, he is liable to a penalty of forty shillings for each refusal; if he wilfully makes a false declaration he may be indicted for perjury.

Any ratepayer or owner of property in the district may be present at the audit and object to the accounts before the auditor. A ratepayer or owner can appeal to the L. G. B. against any allowance made by the auditor, or he may apply to the Court of King's Bench for a writ of *certiorari*. The auditor, on the application of such person, must state in writing his reason for making an allowance. (S. 247, P. H. Act, 1875.)

An auditor must disallow every item of account contrary to law, and surcharge it on the person making or authorizing the making of the illegal payment. He must also charge to any person who has to account the amount of any deficiency or loss due to his negligence or misconduct, and the amount of any sum which ought to have been, but is not, brought into account by him. In every such case the auditor must certify the amount due, and on the application by any party aggrieved he must state in writing his reason for disallowing or surcharging any amount.

Any person aggrieved by a disallowance may either apply to

the Court of King's Bench for a writ of *certiorari*, or he may appeal to the L. G. B.

N.B.—Where, however, expenses paid by a district council have been sanctioned by the L. G. B., the district auditor must not disallow them. (*Local Authorities Expenses Act, 1887.*)

With regard to these appeals the L. G. B. has exactly the same powers as it has in the case of appeals against allowances or disallowances made by poor law auditors. (S. 247, P. H. Act, 1875.) The Board can determine the question of the appeal as it thinks fit, and uphold or upset the auditor's decision; but even if it finds that a disallowance or surcharge made by the district auditor is lawful, the Board can order it to be remitted if the expenditure disallowed and surcharged was incurred under such circumstances as to make a remission fair and equitable. (S. 4, Act 11 & 12 Vict. c. 91.)

N.B.—Generally speaking, unless a payment or expenditure is expressly authorized by any of the statutes governing district councillors, it will be an unlawful payment, and therefore liable to be surcharged on the councillors or others who have authorized it. In such a case the councillor's only hope of relief is that the L. G. B. will exercise the discretion vested in the Board in his favour, and remit the amount—that is, if he chooses this simpler course to applying for a writ of *certiorari* to remove the auditor's disallowance, to be dealt with in the King's Bench Division.

In *R. v. Dolby* (1902), 18 T. L. R. 434, the Court upheld the auditor's disallowance of the expenses incurred in repairing an omnibus which the council had purchased for taking the members about the district in the performance of their ordinary duties; but "if they had been called upon to do extraordinary duties which would have involved a certain amount of expenditure properly chargeable, and it had been shown that the course they had adopted was an economical one, the case would have been different." (*Per Lord Alverstone, C.J.*)

Every sum certified by the auditor to be due must, if there is no appeal, be paid to the treasurer of the council within fourteen days. If not so paid, this sum may be recovered in the same manner as poor rate, *i.e.*, the person surcharged may be

summoned, and if he fails to appear the justices can grant a warrant of distress. (S. 247, P. H. Act, 1875.)

Bills of costs in respect of legal business done for the council, which have been taxed by the Clerk of the Peace of the County, are to be *prima facie* evidence of the reasonableness of the amount, but not of the legality of the charge.

If a bill of costs is not taxed by the Clerk of the Peace, or by any other taxing officer, before being presented to the auditor, the auditor's decision on the reasonableness and the legality of the charge is to be final. (S. 249, P. H. Act, 1875.)

Within fourteen days after the completion of the audit of an urban district council's accounts, the auditor must deliver a report on the accounts audited and examined to the clerk of the council. This report must be deposited at the council's offices, and the council must publish an abstract of the accounts in a local newspaper. (S. 247, P. H. Act, 1875.) A rural district council must publish, in a local newspaper, an abstract of their accounts, as certified by the auditor; but the auditor, within fourteen days after the completion of the audit, must send his report to the L. G. B. (L. G. B. Order, 20th May, 1895.)

The accounts of the council's officers and assistants, who are required to receive money on the council's behalf, must be audited by the district auditor. The above provisions, relating to the council's accounts, apply to the accounts of the council's officers. (S. 250, P. H. Act, 1875.)

Baths and Wash-houses.

When the Baths and Wash-house Acts are not in force in an urban district, the council can adopt them. (S. 10, P. H. Act, 1875.) In rural parishes the parish council have the exclusive right of adopting these Acts. (S. 7, L. G. Act, 1894.)

When these Acts have been adopted, the council can purchase or appropriate land belonging to them for establishing public baths or wash-houses (s. 24); can build baths or make open bathing places (s. 25); or contract for their erection and equipment (s. 26); or the council can purchase existing baths or wash-houses (s. 27).

Any contract for over 100*l.* must be by tender, of which fourteen days' notice must be given in a local newspaper. (S. 26, B. and W. Act, 1846.)

Cf. s. 174, sub-s. 4, P. H. Act, 1875, which provides that contracts for the purposes of the P. H. Act of the value of 100*l.* must be by tender, of which ten days' notice must be published.

The Lands Clauses Act, 1845, governs purchases of land, which can only be taken by agreement, by a council for establishing baths. (S. 4, B. and W. Act, 1847.)

The council can borrow money with the consent of the L. G. B. (s. 9, B. and W. Act, 1878) for establishing a bath or wash-house on the security of the rates (s. 21, B. and W. Act, 1846), and the Public Works Loans Commissioners can lend money for this purpose. (S. 22, B. and W. Act, 1846.)

"Bath" includes a covered swimming bath. (S. 3, B. and W. Act, 1878.) The council can close a covered swimming bath for such period as they think fit from the beginning of November to the end of March, and turn it into a gymnasium or place of recreation, or allow it to be used for parochial purposes. (S. 5, B. and W. Act, 1878.) Or, again, it may be used for music and dancing if the council get the necessary license. But no part of the licensed premises must be let except occasionally to a person; and the person to whom the use of the premises is let for music or dancing must not take money at the door for admission; and the council will be responsible for any breach of the conditions on which the license was granted. (S. 2, B. and W. Act, 1899.)

When the building is put to the use as a gymnasium, &c. the council can make bye-laws and charges for its use as such, and can appoint officers for its management as such. (Ss. 6, 7, 8, B. and W. Act, 1878.)

The management and control of the baths or wash-houses established by the council are in the hands of the council. (S. 33.)

The council can appoint officers and make bye-laws for regulating the use of the baths. These bye-laws (which can impose penalties up to 5*l.*, and which must be approved by the L. G. B.) must provide (a) for the control of the baths; (b) for securing privacy for the persons using them and the safety of bathers in open bathing-places; (c) for securing that males over eight

years of age shall bathe separate from females; (d) for preventing damage, disturbance, nuisances, and indecency of language and behaviour; (e) for defining the duties of the officers. (S. 34.)

A copy or abstract of these bye-laws must be hung up in every bath-room and near every wash-tub in a wash-house. (S. 35.)

Offenders against the bye-laws can be removed (s. 10), and any person who has been convicted of a breach of bye-laws or of an offence against public decency in the baths may be refused admission to them. (S. 11.)

There must be provided at least twice as many baths (s. 36) and twice as many wash-tubs (s. 5) for the use of the labouring classes as there are those provided for the use of persons of a higher class.

The scheduled charges for the use of a swimming-bath are fixed at eightpence for 1st Class; fourpence for 2nd Class; twopence for 3rd Class. There is no intimation in the Act as to whether the classification refers to the bather, or to the state of the bath, or to the accommodation provided him in the shape of towels, &c. (S. 4, B. and W. Act, 1878.)

In open bathing-places where several persons bathe in the same water the charge for each person is to be a penny. (S. 14, B. and W. Act, 1878.)

The schedule to the 1847 Act defines the charges that may be made for other baths and wash-tubs.

(a) *Baths for the Labouring Classes*.—Every bath is to be supplied with clean water for every person bathing alone or for several children bathing together, and each bather is to have one clean towel.

The charge for one person alone, over eight years of age, is not to exceed one penny for a cold bath, and twopence for a hot bath.

In the case of children under eight years of age, and not more than four in number, bathing together, the charge is not to exceed twopence for a cold bath and fourpence for a warm bath.

The charge for a higher class bath is not to be more than three times the charge for a labouring class bath.

(b) *Wash-houses*.—Wash-houses must be supplied with conveniences for washing and drying clothes. The charge for the use of wash-tubs, drying conveniences, &c., is not to exceed one penny, or twopence for two hours together.

The charges for using the higher class washing conveniences are to be in the same proportion as in the case of the baths. (Schedule to 1847 Act.)

When establishing a wash-house, which is a place for washing clothes, the council may provide it with an open drying-place. (S. 25, B. and W. Act, 1846.)

In order to recover charges for the use of a wash-house the council's officers can detain clothes brought there to be washed until payment is made; and if this payment is not made within a week, the clothes can be sold—any surplus from the proceeds of sale being handed over to their owner. (S. 38, B. and W. Act, 1846.)

Receipts from baths and wash-houses must be applied by the council to defraying the expense of up-keep—any deficiency being payable from the general district fund. (S. 13, B. and W. Act, 1878.)

When baths or wash-houses after being established for seven years are considered by the council to be unnecessary or too expensive, the council, if the L. G. B. consents, can sell them. (S. 32, B. and W. Act, 1846.)

Bathing.

An urban council (and a rural council if invested by the L. G. B. with the necessary powers) can make bye-laws—

- (a) for fixing the stands of the bathing-machines and the limits within which persons of each sex shall bathe;
 - (b) for preventing indecent exposure;
 - (c) for regulating the manner in which the machines shall be used and the charges to be made for their use;
 - (d) for regulating the distance at which pleasure boats shall keep from persons bathing within the prescribed limits.
- (S. 171, P. H. Act, 1875, incorporating s. 69, Towns Police Clauses Act, 1847.)

N.B.—The fact that part of a beach is private property will not prevent the council from making bye-laws with regard to it if it is used as a public bathing-place. (*Parker v. Clegg* (1903), 2 L. G. R. 608.)

A bye-law which fixed the charge for the towels and costume which a bathing-machine proprietor had to supply to the bathers was held to be *ultra vires*. “The power of making bye-laws ‘for regulating the manner in which bathing-machines shall be used, and the charges for the same,’ clearly does not include a power to regulate the charges for things quite different from bathing-machines.” (*Per Wills, J., in Parker v. Clegg.*)

In districts to which Part X. P. H. Act, 1907, has been applied by the L. G. B. the council have additional powers with respect to bathing-places:—

- Bye-laws may be made with regard to any public bathing, whether from bathing-machines or not, for any of the purposes mentioned in s. 69, Towns Police Clauses Act, 1847, *supra*.

Bye-laws may also be made for regulating the hours of bathing and for enforcing the provision and maintenance of life-saving apparatus or other means of protecting bathers from danger by persons providing accommodation for public bathing. (S. 92, P. H. Act, 1907.)

The council may, if they think fit, provide at any place in their district which abuts on the sea or on a river, bathing-sheds or other conveniences with all necessary appliances, and may charge for the use of these things. (S. 92, P. H. Act, 1907.)

The council may provide and maintain life-saving appliances at any place in their district where they think those appliances are likely to be of use. (S. 93, P. H. Act, 1907.)

Borrowing.

The sanction of the L. G. B. is necessary for a loan raised by a district council. The council can borrow money for defraying expenses which have been incurred, or which are to be incurred, by them in carrying out their powers, or for the purpose of discharging loans. The money can be borrowed on the credit of the district funds or rates.

In the case of a loan raised by a rural district council, if the money borrowed is to be applied to the "general" expenses of the council, it must be borrowed on the credit of the common fund out of which those expenses are payable; if it is to be applied to "special" expenses, then the loan must be on the credit of the rate or rates out of which the "special" expenses of the council are defrayed. (S. 233, P. H. Act, 1875.)

No part of the fund devoted to "general" expenses can be applied to "special" expenses, or *vice versa*. (*Jersey v. Uxbridge R. S. A.*, (1891) 3 Ch. 183; 60 L. J. Ch. 833.)

For securing repayment of a loan the council can mortgage any fund or rate to the person from whom the money is borrowed. (S. 233, P. H. Act, 1875.)

The Public Works Loans Commissioners may, on the application of a district council, and on the recommendation of the L. G. B., lend money (ss. 242 and 243, P. H. Act, 1875) for the purpose of any works which the council are authorized to execute. (Public Works Loans Act, 1896.) This loan may be made on the security of a district fund or rate (s. 242), though the Commissioners can require further security in the form of a mortgage of the council's property or of a rate. (S. 12, P. W. L. Act, 1875.)

The L. G. B. must determine the time in which a loan from the Public Works Commissioners shall be repaid by the council, but this period must not exceed 50 years. (S. 243, P. H. Act, 1875.) The interest payable on such loans has been settled by the Treasury under the powers given by the P. W. L. Act, 1897. These rates have been fixed as follows:—

3½ p.c. p.a. when the period of repayment does not exceed	20 years.
3¾ p.c. p.a. when the period of repayment does not exceed	30 years.
4 p.c. p.a. when the period of repayment does not exceed	40 years.
4½ p.c. p.a. when the period of repayment does not exceed	50 years.

The first instalment of a loan from the Public Works Loans

Commissioners must be repaid within five years from the date of its advance. (S. 11, P. W. L. Act, 1875.)

(i) Money can only be borrowed for permanent works. This includes works of which the cost, in the opinion of the L. G. B., ought to be spread over a number of years.

(ii) The sum borrowed must not, with the balances of any outstanding loans, exceed the whole assessable value for two years of the district.

(iii) When the sum proposed to be borrowed will, with such balances (if any), exceed one year's assessable value of the district, the L. G. B. cannot sanction the borrowing until after an L. G. B. inquiry.

N.B.—The limitations in (ii) and (iii) do not apply to money borrowed by the council for the purpose of the Housing of the Working Classes Acts.

(iv) The money may be borrowed for such time as the council, with the sanction of the L. G. B., in each case determine, but this time must not exceed sixty years.

N.B.—In the case of a loan from the Public Works Loans Commissioners the time limit is fifty years. (S. 243, P. H. Act, 1875.) The maximum period for housing purposes is eighty years. (See "Housing," p. 205.) •

The loan must be repaid, subject to the agreement under which it was advanced, either by equal annual instalments of principal, or principal and interest, or by means of a sinking fund, which, with the accumulations of compound interest from the investment of such sinking fund in Government securities, will be sufficient to pay off the loan within the period sanctioned.

(v) The council may *at any time* (i.e., before the period for repayment of the loan expires) apply the whole or any part of the money set apart as a sinking fund to repayment of a loan. But they must in this case continue to pay into the sinking fund each year and accumulate, until the whole of the loan has been discharged, a sum equivalent to the interest that would have been produced by the sinking fund or the part of it which has been paid out to the creditors.

(vi) Where money is borrowed to pay off a previous loan, the

time in which the repayment of the second loan is to be made must not, without the sanction of the L. G. B., extend beyond the unexpired portion of the period for which the first loan was sanctioned. In no case must it be extended beyond the period of sixty years from the date of the first loan.

When an *urban* council have borrowed money for defraying private improvement expenses, or expenses in respect of which they have determined a part only of the district to be liable—(N.B. Under s. 211, sub-s. 4, P. H. Act, 1875, an urban council can divide the district or any street in it into parts for any of the purposes of the Act)—they must repay the loan either out of private improvement rates or on a rate levied on the particular part of the district. (S. 234, P. H. Act, 1875.)

A district council possessed of lands or works for sewage disposal purposes can borrow money on the credit of that land and plant, and can mortgage the property to the person advancing the money. The power to borrow given by this section to a council is, *when the sums borrowed do not exceed three-fourths of the purchase-money of the lands*, a distinct power from and in addition to the general borrowing powers conferred on a council by ss. 233, 234 and 242. The interest on moneys borrowed in pursuance of this section may be paid by the council out of the rates. (S. 235, P. H. Act, 1875.)

N.B.—The effect of this section is to give a district council a free and unrestricted right to raise a loan on the security of sewage land if, and only if, the loan does not exceed in amount three-fourths of the price paid by the council for the land. Should the loan exceed that value, then the requirements of ss. 233 and 234, *supra*, will have to be complied with.

An urban district council which have adopted Part V. of the P. H. Act, 1890, and which have obtained a consent order of the L. G. B., can raise money by the issue of stock. The creation, issue, dealing with, and redemption of stock must be in accordance with the regulations of the L. G. B. (S. 52, P. H. Act, 1890.)

Stock Regulations, 1891, 1897 and 1901, have been made by the L. G. B.

The resolution of the council that stock be created must be in the form of Schedule A. of the Stock Regulations, 1891.

When a district council propose to issue stock they must, before the issue of it, deliver to the Inland Revenue Commissioners a statement of the amount to be secured by the issue. This statement must be charged with an *ad valorem* stamp duty of half-a-crown for every 100*l.* and any fraction of 100*l.* over any multiple of 100*l.* (S. 8, Finance Act, 1899.)

A mortgage which the council can make must be in the form of a deed and must be sealed with the seal of the council. It may be in the form contained in Form K. of Schedule IV. of the Act or to the like effect. (S. 236, P. H. Act, 1875.)

A register of mortgages on each rate must be kept by the council, and within fourteen days after the date of a mortgage an entry must be made in the register of its number and date, and of the names and description of the parties to it, as stated in the deed. This register must be open to inspection free of charge. (S. 237, P. H. Act, 1875.)

A mortgage may be transferred. A form of transfer is contained in Form I. of Schedule IV. The council must keep a register of transfers. The council's clerk must enter the transfer in the register on the deed of transfer being produced to him, and on payment of a fee not exceeding five shillings. Until a transfer is entered in the register the council will not be in any manner responsible to the transferee. There is a 20*l.* penalty on the clerk neglecting to enter a transfer in the register. The entry must be made within thirty days after the deed of transfer has been executed; but if the deed is executed outside the United Kingdom the entry must be made within thirty days after its arrival in the United Kingdom. (S. 238, P. H. Act, 1875.)

If the money due on the mortgage is not paid after six months from the date it becomes payable, and a written demand has been made for payment, a mortgagee can apply to a Court of Summary Jurisdiction to appoint a receiver. No such application, however, can be entertained unless the sums due to the applicant (or applicants) amount to 1,000*l.*

If a receiver is appointed the rates mortgaged or a part of them sufficient to discharge the debt must be paid to him. (S. 239, P. H. Act, 1875.)

The district council can grant a yearly rent-charge on premises to a person who has advanced money in respect of expenses in relation to those premises, which expenses have been or which may be declared by the council to be private improvement expenses. But before granting this rent-charge the council must be satisfied (*e.g.*, on the report of their surveyor) that the money advanced has been duly expended. Form K of Schedule IV. of the P. H. Act, 1875, prescribes a form of rent-charge.

The grantee of the rent-charge can enforce payment by levying a distress on the premises. The rent-charge begins to accrue from the day of the completion of the works on which the money advanced has been expended. It must be payable by equal half-yearly instalments for such a term, not exceeding thirty years, that the sum advanced, together with the costs of preparing the grant, will be repaid at the end of the term. (S. 240, P. H. Act, 1875.)

Rent-charges and transfers of them must be registered in the same manner as mortgages are required to be registered. (S. 241, P. H. Act, 1875.)

Buildings.

BUILDING BYE-LAWS.

An urban council (and a rural council if so empowered by the L. G. B.) can make bye-laws with respect to:—

- (i) The level, width, and construction of new streets and the provision of the sewerage of them. (S. 157, P. H. Act, 1875.)

The words “with respect to the level, width, and construction of new streets” include the construction of the buildings, and the buildings themselves and front gardens or whatever else is at the side of the roadway. (*Per* Bramwell, L. J., *Baker v. Mayor of Portsmouth* (1878), 3 Ex. D. 157; 47 L. J. Ex. 223.)

A bye-law which requires the entrance to a proposed new street to be of equal width with the rest of the new street is valid. (*Hendon L. B. v. Pounce* (1889), 42 Ch. D. 602; *Barton Regis R. D. C. v. Stevens* (1896), 12 T. L. R. 347.) If the building owner’s proposed plans for constructing a new street do not admit of the width of the street being in accordance with the

bye-laws, he must alter his scheme of development so as to be in accordance with them. (See judgment of Pollock, B., in the last-mentioned case.)

As to the council's power in fixing the position and length of new streets, see p. 37.

Passages intended primarily to give access to privies at the backs of houses may be "streets." (*R. v. Goole L. B.* (1891), L. R. 2 Q. B. 212; 63 L. J. Q. B. 617.)

See also as to validity of bye-laws governing new streets, BYE-LAWS, p. 62.

- (ii) The structure of walls, foundations, roofs, chimneys of new buildings, for securing stability, for preventing fire, and for purposes of health. (S. 157, P. H. Act, 1875.)

A district council, urban or rural, in whose district s. 24 of Part II., P. H. Act, 1907, is in force, can make bye-laws with respect to—(a) the height of chimneys of buildings and the height of buildings, and (b) the structure of chimney shafts for the furnaces of steam engines, breweries, distilleries, or manufactories.

The erection of a "new building" takes place on the re-erection of a building which has been pulled down to or below the ground floor, or on the re-erection of a frame building of which only the framework is left down to the ground floor, or on the conversion into a dwelling-house of a building not originally constructed for human habitation, or on the conversion into more than one dwelling-house of a building originally constructed as one dwelling-house only. (S. 159, P. H. Act, 1875.)

In proceedings relating to the erection of buildings it is open to the Court to decide whether something which cannot be brought within any of the above specific descriptions, is or is not a "new" building. (*Redruth Brewery Co. v. Redruth U. D. C.* (1904), 3 L. G. R. 130.)

Wooden hoardings erected for advertisement purposes are not "buildings." (*Slaughter v. Mayor of Sunderland* (1891), 60 L. J. M. C. 91.)

A wooden structure 10 ft. long, 8 ft. broad and 10 ft. high,

used as a shelter for a weighing machine, and a similar structure of almost similar dimensions used as a tea-booth, have been held not to be "buildings." (*Southend Corporation v. Archer* (1901), 70 L. J. K. B. 328.)

But the definition of a "new building" contained in s. 23, P. H. Act, 1907, will apply in those districts where this section is in force. This section enacts that for the purposes of the P. H. Acts and any bye-laws made under them, each of the following operations is to be deemed to be the erection of a new building:—

- (a) The re-erection, wholly or partially, of any building of which an outer wall is pulled down or burnt down to or within 10 ft. of the surface of the ground adjoining the lowest storey of the building, and of any frame building so far pulled down or burnt down as to leave only the framework of the lowest storey;
- (b) The conversion into a dwelling-house of any building not originally constructed for human habitation, or the conversion into more than one dwelling-house of a building originally constructed as one dwelling-house only;
- (c) The re-conversion into a dwelling-house of any building which has been discontinued as or appropriated for any purpose other than that of a dwelling-house;
- (d) The making of any addition to an existing building by raising any part of the roof, by altering a wall, or making any projection from the building, but so far as regards the addition only (*N.B.*—The addition is to be deemed the new building); and
- (e) The roofing or covering over of an open space between walls or buildings.

Bye-laws may also be made with respect to:—

- (iii) The sufficiency of the space about buildings to secure a free circulation of air, and with respect to the ventilation of the buildings. (S. 157, P. H. Act, 1875.)
- (iv) The drainage of buildings; the closets, privies, ash-pits and cess-pools in connection with them; the closing of

buildings unfit for human habitation. (S. 157, P. H. Act, 1875.)

In districts where Part III. of the P. H. Act, 1890, is in force bye-laws may be made with respect to—

- (v) The keeping of water-closets with a sufficient supply of water for flushing;
- (vi) The structure of floors, hearths, and staircases, and the height of rooms intended for human habitation;
- (vii) The paving of yards and open spaces used in connection with dwelling-houses;
- (viii) The provision in the laying out of new streets of secondary means of access, where necessary, for the purpose of the removal of house refuse and other matter. (S. 23, sub-s. 1, P. H. Act, 1890.)

N.B.—A rural council which have adopted Part III. of the Act can make bye-laws with respect to the matters referred to in (iii), (iv), (v), (vi), *supra* (s. 23, sub-s. 3, P. H. Act, 1890), but not with respect to the matters referred to in (vii) and (viii), these two paragraphs not being applicable to rural districts (s. 50, P. H. Act, 1890), though, of course, the L. G. B. may by Order empower the council to make bye-laws with regard to these matters also.

- (ix) Any district council which have adopted Part III. of the P. H. Act, 1890, can make bye-laws to prevent buildings which have been erected in accordance with the bye-laws from being altered in such a way that, if at first so constructed, they would have contravened the bye-laws. (S. 23, sub-s. 4, P. H. Act, 1890.)

Unless the bye-laws expressly state that they are to have a retrospective operation, they will not apply to buildings begun before the bye-laws came into force. (*Hubbard v. Bromley R. D. C.* (1905), 69 J. P. 437.)

An urban council which have adopted Part III. of the P. H. Act, 1890, can make their bye-laws with respect to the matters referred to in (iv) and (v), *supra*, apply to "old" buildings, *i.e.*, to buildings which were in existence before the bye-laws (s. 23, sub-s. 2, P. H. Act, 1890); and a rural council which have been

invested with an urban council's powers under s. 157, P. H. Act, 1875, by L. G. B. order can do likewise. (*Simmons v. Malling R. D. C.*, (1897) 2 Q. B. 433; 66 L. J. Q. B. 585.)

The provisions of s. 157, P. H. Act, 1875, do not apply to buildings belonging to railway companies and used for the purposes of the railway (s. 157, P. H. Act, 1875); but they apply to buildings erected by any other corporate body under statutory powers unless there is an inconsistency between the company's special Act and the P. H. Act, 1875. (*Uckfield R. D. C. v. Crowborough Water Co.*, (1899) 2 Q. B. 664; 68 L. J. Q. B. 1009.)—In this case the company, authorized by a special Act to build a water-tower, was held not on that account to be exempt from depositing plans with the district council of the intended building in accordance with the council's bye-laws.

Buildings (other than dwelling-houses) of railway companies and public bodies authorized to maintain harbours, piers or docks, and of canal owners are exempt from Part II. of the P. H. Act, 1907. (S. 33, P. H. Act, 1907.)

BUILDING PLANS.

The district council can make provision in their bye-laws respecting buildings for the giving of notice and the deposit of plans and sections by persons intending to construct new buildings or to lay out new streets, and also for the inspection of the work by the council. (S. 157, P. H. Act, 1875.)

The deposit of plans in pursuance of any bye-law may, by notice in writing to the depositor, be declared by the district council to be of no effect if the work to which the plans relate is not commenced:—(i) As to plans deposited before s. 15 of the P. H. Act, 1907, comes into force in the district, within three years of the date when it comes into force; (ii) as to plans deposited after the section comes into force, within three years from the date of the deposit.

When the deposit has been declared to be of no effect, a fresh deposit of plans must be made before the work can be begun.

The council must give notice of the provisions of this section to every person intending to lay out a new street or to erect a new building in relation to which plans have been deposited before the section came into force in the district, but in respect of which work has not begun before this section comes into

force. A similar notice must be attached to the approval of plans deposited subsequent to this section coming into force. (S. 15, P. H. Act, 1907.)

The district council can retain any drawings, plans, specifications, &c. deposited with and approved by them. (S. 16, P. H. Act, 1907.)

N.B.—Ss. 15 and 16 of the P. H. Act, 1907, are only in force when they or the whole of Part II. of the Act have, on the application of the council, been declared to apply to the district by order of the L. G. B. (S. 3, P. H. Act, 1907.)

On the deposit of a plan and sections of a new street in pursuance of a bye-law the council may by order vary the intended position, direction or termination, or level of the new street so far as is necessary to secure more direct, easier or more convenient means of communication with any other street or intended street, or for the purpose of securing an adequate opening at either end of the new street, or to secure compliance with any enactment or bye-law in force in the district for the regulation of streets and buildings.

The council may also by their order fix the points at which the new street shall be deemed to begin or end, and the limits so fixed shall have effect for the purposes of the P. H. Acts, and any bye-laws in force in the district. (S. 17, sub-s. 1, P. H. Act, 1907.)

The council cannot exercise their powers under this section if it is shown to their satisfaction that compliance with their order will entail the purchase of additional lands by the owner of the lands on which the new street is intended to be laid out, or the execution of works elsewhere than on those lands. (S. 17, sub-s. 2.)

Where the council make an order under this section the new street must be laid out or constructed in compliance with the order, and a contravention of the order involves a penalty of 5*l.* and a daily penalty of 40*s.* (S. 17, sub-s. 3.)

The council must pay compensation to any person injuriously affected by the exercise of their powers under this section. (S. 17, sub-s. 4.) This compensation is to be determined in the manner provided by s. 308, P. H. Act, 1875. (S. 10, P. H. Act, 1907 ; and see p. 18.)

There is an appeal to Quarter Sessions from an order by the district council under this s. 17. (S. 7, P. H. Act, 1907.)

N.B.—S. 17 only applies in districts where it or Part II. of the Act is in force.

As regards the question of what constitutes a laying out or construction of a new street, in a case where the owner of lands which were separated from the highway by a hedge had erected houses on those lands, and had made the necessary openings in the hedge so as to provide means of entrance to and exit from the houses that were being built—it was held that this did not amount to the laying out of a new street. (*Devonport Corporation v. Tozer*, (1903) 1 Ch. 759; 72 L. J. Ch. 411.) There must be a physical laying out of a street, not what might be called a metaphorical laying out. (See judgment of Romer, L.J., *ibidem*.)

The council, on the deposit of plans being made, may require the corner of any building intended to be erected at the corner of two streets to be rounded off or splayed off to the height of the first storey or to the full height of the building, and to such extent otherwise (*e.g.* laterally) as they may determine.

Compensation must be paid for any loss sustained by reason of the council exercising their powers under this section. (S. 22, P. H. Act, 1907.)

N.B.—There is an appeal to Quarter Sessions against the council's requirement (s. 7, P. H. Act, 1907); and the section is in force only if it is made applicable to the district by L. G. B. Order.

Within one month after the deposit of a plan by a person intending to erect a new building, the council, where there are a sufficient water supply and sewer, may by written notice to that person require the new building to be provided with such number of proper and sufficient water-closets and slop-closets, or with such one or more of either class of closet as the circumstances of the case may render necessary. There is a penalty of 5*l.* and a daily penalty of 40*s.* for non-compliance with the council's requisition. (S. 39, sub-s. 2, P. H. Act, 1907.)

A person can, however, appeal to a Court of summary jurisdiction against the council's requisition within fourteen days

after receiving notice of the council's requirement. (S. 42, P. H. Act, 1907.)

The expression "a sufficient water supply and sewer" means a water supply and a sewer which are sufficient and reasonably available for use in the efficient flushing and the efficient removal of excreta from the closets which council have required to be provided in the particular cases.

"Water-closet" and "slop-closet" mean closet accommodation used in connection with the water carriage system, and having proper communication with a sewer, and having provision for the flushing of the receptacle, in the case of a water-closet, by means of a fresh water supply, and in the case of a slop-closet, by means of slops or waste liquids of the household or rain-water. (S. 39, sub-s. 1, P. H. Act, 1907.)

N.B.—S. 39 is only in force when it or Part III., P. H. Act, 1907, has been applied to the district by L. G. B. order; and, moreover, the council can only exercise their powers under this section in respect of a slop-closet if they have been specially empowered so to do by L. G. B. order. (S. 39, sub-s. 5, P. H. Act, 1907.)

When the bye-laws require the deposit of plans of an intended building work, the council must within one month after the plan has been deposited, *i.e.*, delivered or sent to their surveyor or clerk, signify in writing to the depositor their approval or disapproval of the plan.

Should the work be begun after such notice of disapproval, or before the expiration of the month without such approval, and if it is in any respect not in conformity with the council's bye-laws, the council can have so much of the work as has been executed pulled down. (S. 158, P. H. Act, 1875.)

But if the council allow the month to elapse without signifying their disapproval of the plans, they cannot recover penalties or order the work to be demolished, even though it is in contravention of the bye-laws. (*Clark v. Bloomfield* (1885), 1 T. L. R. 323.)

The expenses incurred by the council in connection with the removal of work done contrary to a bye-law can be recovered summarily either from the actual builder or from the person who caused the work to be done.

The continuance of any work in such a form as to be in contravention of a bye-law is a continuing offence, for which a penalty can be imposed by the council in their bye-laws; but the enforcement of any penalty is barred after the expiration of one year from the day when the offence or the breach of bye-laws was committed. (S. 158, P. H. Act, 1875.)

N.B.—S. 158, *supra*, applies in rural districts when Part III. of the P. H. Act, 1890, has been adopted by the rural district council (s. 23, sub-s. 3, P. H. Act, 1890); and also in any district in which s. 24, P. H. Act, 1907 (relating to bye-laws in respect of chimneys), is in force. (S. 24, P. H. Act, 1907.)

When a district council have honestly exercised their discretion as to approving or disapproving of plans, no action will lie to compel them to come to a different conclusion. (*Smith v. Chorley R. D. C.*, (1897) 1 Q. B. 678; 66 L. J. Q. B. 427.)

Nor will an action lie to compel the council to approve plans or for damages on account of their refusal to approve, even though it be alleged that the council were actuated by some oblique motive in refusing their approval. (*Davis v. Mayor of Bromley*, "The Times," Oct. 18th, 1907.)

But the council will be compelled to approve a plan if it fulfils the requirements of the bye-laws and the council make their approval conditional on the plans showing some works which the intending builder is not required by the bye-laws to do. (*R. v. Tynemouth R. D. C.*, (1896) 2 Q. B. 451; 65 L. J. Q. B. 545.) In this case the council had refused to approve plans, which were in accordance with the bye-laws, unless the landowner, who was proposing to develop a building estate, provided in the plans for an outfall sewer beyond the boundary of the estate.

A builder must not make a substantial departure from the plans approved by the council without first submitting fresh plans. (*James v. Masters*, (1893) 1 Q. B. 355.)

A council, by approving of plans, will not thereby be precluded from making new bye-laws which may affect the particular buildings. A local authority approved plans for a terrace of houses. Before all the houses had been erected new building bye-laws came into force in the district. It was held that these new bye-laws applied to the building of those houses

in the terrace which had not then been erected, and, further, that a bye-law which made a reservation in favour of work "commenced" before the date of the confirmation of the new bye-laws did not protect those houses which in fact had not at the time been "commenced." (*White v. Sunderland Corporation* (1903), 88 L. T. 592.)

Before proceeding to pull down a building which has been erected contrary to the bye-laws or in spite of the council's disapproval of plans, the council must give the owner notice of their intention and an opportunity to him to show cause why they should not take so extreme a course. (*Hopkins v. Smethwick L. B.* (1890), 24 Q. B. D. 712; 59 L. J. Q. B. 250.)

The owner of the house, whether he was responsible for its erection or not, is the person against whom the proceedings must be taken for a continuing offence. A builder who, after erecting a house in contravention of the bye-laws, sold it, was held not to be the person liable for the continuance of the offence. (*Welsh v. West Ham Corporation*, (1900) 1 Q. B. 324; 69 L. J. Q. B. 114.)

A building described in a plan deposited with the council, otherwise than as a dwelling-house, must not be used for human habitation except by a caretaker and family. With this exception anyone who wilfully uses it, or permits it to be used as a dwelling-place, is liable to a penalty of 5*l.* and a 40*s.* daily penalty. (S. 33, sub-s. 1, P. H. Act, 1890.)

But it may be so used if it has attached to it, and exclusively belonging to it, an open space as required by any bye-law in the district, and if it has undergone such structural alterations as the council deem necessary to make it fit for the purpose. (S. 33, sub-s. 2, P. H. Act, 1890.)

N.B.—This section is only in force in districts where Part III. of P. H. Act, 1890, has been adopted by the council.

MISCELLANEOUS POWERS WITH REGARD TO BUILDINGS.

In an urban district no building must be erected over a sewer, and no vault, arch or cellar must be built under the carriage-way of a street without the written consent of the council. Besides the penalties prescribed by the section, the offender is

liable to have such building demolished by the council at his expense. (S. 26, P. H. Act, 1875.)

No new building must be erected on ground which has been filled up with offensive matter until the matter has been removed or rendered innocuous. Contravention of this section entails a penalty of 5*l.* and a daily penalty of 40*s.* (S. 25, P. H. Act, 1890.)

N.B.—This section is not in force unless Part III. of the Act has been adopted. This section can be adopted by a rural council.

In urban districts cellar-flaps and doors to vaults must be made of such materials as the council direct, and must be kept in good repair by the occupier of the cellar. (S. 160, P. H. Act, 1875, incorporating s. 69, Towns Improvement Clauses Act, 1847.) Further, in urban districts where Part III. of the P. H. Act, 1890, has been adopted, all vaults, arches and cellars under a street, and all openings into them, and cellar heads, gratings, lights and coal-holes on the surface of the street, and all landings, flags or stones of the path or street supporting them, must be kept in good repair by the owners or occupiers of the cellars or buildings to which they belong. If these persons make default, the council, after giving them twenty-four hours' notice to do any necessary repairs, can do the work and recover the expenses summarily from the owner or occupier. (S. 35, P. H. Act, 1890.)

N.B.—A rural council cannot adopt this section. (S. 50, P. H. Act, 1890.)

If a yard in connection with, and exclusively belonging to, a dwelling-house is not so formed, flagged, asphalted or paved, or is not provided with such works on, above or below the surface of the yard, as to allow of the effectual drainage of the sub-soil or surface of the yard to a proper outfall, the council, by notice in writing, can require the owner to do the necessary works within twenty-one days from the notice. Should he fail to complete the execution of such works within that period, the council can execute them, and recover the expenses incurred from the owner summarily as a civil debt. (S. 25, P. H. Act, 1907.)

N.B.—The owner can appeal against the council's requirements to the L. G. B. (S. 7, P. H. Act, 1907.)

When s. 26 of Part II., P. H. Act, 1907, comes into force in a district, the entrances to any courts must not be closed or narrowed, or otherwise affected by any permanent structure so as to impede the free circulation of air, and the height of such entrances must not be lowered, without the consent of the council.

This consent may be made subject to the provision of other sufficient opening or means of access, or of other sufficient means of securing a free circulation of air throughout the court.

The section does not apply to any court which by reason of its situation, use, architectural features, or other characteristics is, either wholly or in part, necessary for, or ancillary to, the ornament or amenity of any lands or premises.

An offender against this section is liable to a penalty of 5*l.* and a daily penalty of 20*s.* (S. 26, P. H. Act, 1907.)

N.B.—Neither of the above sections will be in force until applied by L. G. B. order to a district.

An urban council can give notice to the owner or occupier of a house or building to remove or alter any porch, projecting window, step, sign, shutter, gate, fence or other projection from a house which is an obstruction to the safe and convenient passage along the street.

In the case of such obstructions which came into existence since the P. H. Act, 1875, or any local Act incorporating the Towns Improvement Clauses Act, 1847, came into force, fourteen days' notice to remove must be given; and if the notice is not obeyed, the council can effect the work and recover the expense as a debt from the person on whom the notice was served, who, in addition, is liable to a 40*s.* penalty.

In the case of such obstructions which were in existence before the above Acts came into force, thirty days' notice must be given, and the council must make compensation to the owner or occupier for the removal of the particular projection.

The council can direct the owner or occupier to alter doors or gates which open outwards if they obstruct the public way, and can order water-spouts to be fixed to buildings so that

the water may not flow from the buildings on to the streets. (S. 160, P. H. Act, 1875, incorporating ss. 70-74, Towns Improvement Clauses Act, 1847.)

N.B.—The L. G. B. can invest a rural council with similar powers.

In an urban district, when a house or building or its front in a street has been taken down that it may be rebuilt or altered, the council can prescribe the line in which the new erection shall be built.

The council must pay compensation to the owner for any loss he may have sustained by reason of his house being set back or brought forward. The amount, in case of dispute, is to be settled by arbitration as provided by this Act. (S. 155, P. H. Act, 1875.)

A tradesman who took out part of the front of the ground floor and first floor of a three-storied building to improve his shop was held not to have "taken down" the house or its front. (*A.-G. v. Hatch*, (1893) 3 Ch. D. 36; 62 L. J. Ch. 857.)

In an urban district it is unlawful, without the written consent of the council, to erect or to bring forward a house or building beyond the front main wall of the house or building on either side of it in the same street.

An offender against this enactment is liable to a penalty of 40s. for every day the offence is continued, after written notice to that effect from the council (s. 3, Buildings in Streets Act, 1888); and if in spite of a conviction and fine under this section he persists in keeping up the unlawful building, he may be compelled by injunction to remove it. (*A.-G. v. Wimbledon House Estate Co.*, (1904) 2 Ch. 34; 73 L. J. Ch. 593.)

A photographer's show case, which was over 9 ft. long, 7 ft. high, and sunk into the ground, was held to be a "building" which could not be brought forward beyond the building line. (*Leicester Corporation v. Brown* (1893), 62 L. J. M. C. 22.)

A person who has purchased a building which somebody else has erected beyond the building line, even though he allows it to so continue after receiving notice from the local authority, is not the person offending who is liable to the penalty. (*Blackpool Corporation v. Johnson*, (1902) 1 K. B. 646; 71 L. J. K. B. 485.)

A corner house has a "front main wall" in both streets. (*Leyton L. B. v. Causton* (1893), 9 T. L. R. 180.)

Two owners of building plots, 300 ft. apart, on the same side of a street, sent in building plans for the local authority's approval. There were no buildings in existence on this side of the street. B.'s plan showed that the house he proposed to build was set back 12 ft. from the roadway. H.'s plan for his proposed house showed a set back of 6 ft. B.'s plan was approved; H.'s plan disapproved. B. began to build, and when his front main wall was 5 ins. above the level of the foundations, but below the level of the street, H. began to build the front main wall of his house in accordance with his plan, which had been disapproved. The local authority proceeded against H. under s. 3 of this Act. It was held that there was no "front main wall of a house or building" within the meaning of the Act on B.'s plot. The Court also expressed the opinion that "house or building on either side" means a house or building within some degree of proximity, and not one standing a considerable distance away. (*Ravensthorpe L. B. v. Hinchcliffe* (1889), 24 Q. B. D. 168; 59 L. J. M. C. 19.)

N.B.—The above enactments (s. 155, P. H. Act, 1875, and the 1888 Act) only apply in rural districts when the council have been invested by the L. G. B. with the necessary powers.

A building or wall, or anything fixed to it, which, in the opinion of the council's surveyor, is in a ruinous state and dangerous to passengers in the street or to the occupiers of neighbouring buildings, can be dealt with as follows:—

The surveyor must put up a hoarding, if necessary, for the protection of passers-by, and must serve a notice on the owner if he can be found, or, failing that, on the occupier, requiring him to pull down the dangerous building or to make it secure.

The notice must be served personally, or by fixing it on some conspicuous part of the building.

If three days after service of this notice the work required by it has not been begun, the surveyor can make complaint before two justices, who can order the owner or occupier to do the necessary work within a fixed time.

If default is made, the district council can do the work and can recover their expenses, including the expense of erecting the

hoarding (*Usk U. D. C. v. Mortimer* (1903), 20 T. L. R. 96), from the owner. Or the council can sell the materials, and any surplus from the proceeds of the sale, after deducting their expenses, must be handed to the owner. (S. 160, P. H. Act, 1875, incorporating ss. 75—78, Towns Improvement Clauses Act, 1847.)

N.B.—A rural council must be invested by the L. G. B. with the necessary powers before this section can be applied to such buildings in a rural district.

In districts where s. 30 of Part II., P. H. Act, 1907, is in force the following provisions apply to dangerous places fronting or abutting on streets or public footpaths :—

If in any situation fronting, adjoining, or abutting on any street or public footpath, any building, wall, fence, steps, structure, or other thing, or any well, excavation, reservoir, pond, stream, dam or bank is, for want of sufficient repair, protection, or enclosure dangerous to persons using the street or footpath, the council can, by notice in writing served upon the owner, require him within a specified period to repair, remove, protect or enclose it so as to prevent danger therefrom.

If the owner neglect to comply with the notice within the prescribed period, the council can have such work done as they think proper, and can recover the expense incurred from the owner summarily as a civil debt. (S. 30, P. H. Act, 1907.)

In urban districts the council when engaged on works in a street must put up protecting bars and lights at night; and when building operations are to be undertaken which will interfere with the use of any foot-path, the builder must put up a hoarding before the work is begun, and a wooden platform and hand-rail for the protection and use of the public. (S. 160, P. H. Act, 1875, incorporating ss. 79-80, Towns Improvement Clauses Act, 1847.) But this s. 80 is replaced by s. 34, P. H. Act, 1890, in those urban districts where Part III. of that Act has been adopted; with the result that a builder intending to carry out building operations in a street or court must—
(a) before making a beginning, unless the council otherwise consent in writing, put up close-boarded hoarding, to the

council's satisfaction, in order to separate the building from the street; (b) if the council so require, make a convenient covered platform with a hand-rail to serve as a footway for passengers outside the hoarding; (c) keep the hoarding and covered passage in good condition for such time as the council require; (d) keep it lighted at night; and (e) remove it when the council so require.

There are penalties for non-compliance with the above requirements. (S. 34, P. H. Act, 1890.)

N.B.—This section cannot be adopted by a rural council. (S. 50, P. H. Act, 1890.)

In districts where s. 27 of Part II., P. H. Act, 1907, is in force, before any person erects or sets up a temporary building, he must apply to the district council for permission so to do.

The application must be accompanied by a plan and sections of the proposed building drawn to scale of not less than 1 in. to every 8 ft., and a block plan, drawn to a convenient scale, showing the intended surroundings and situation of the proposed building, together with a specification describing the materials to be used in the construction, and the purposes for which the building is intended. (Sub-s. 1.)

The council must within one month after the delivery of the plans and sections and specification signify in writing their approval or disapproval of the building to the person proposing to erect it. (Sub-s. 2.)

The council may attach to their approval any condition which they deem proper with regard to the sanitary arrangements of the building, the ingress thereto and the egress therefrom, protection against fire, and the period during which the building is to be allowed to stand. (Sub-s. 3.)

If such a building is begun or erected without the application, &c., to the council as required by sub-s. 1, *supra*, or after the disapproval of the council, or before the expiration of one month without their approval, or is in any respect not in conformity with any condition attached by the council to their approval, the person who set it up, or if the building is not removed within the period allowed by the council for it to stand, the owner of it is liable to a penalty and a daily penalty of 40s. Moreover, the council can have the building removed, and can

recover any expense incurred in so doing summarily as a civil debt either from the owner or the person erecting it. (Sub-s. 4.)

When the council remove such a building they can sell the materials and apply the proceeds to the payment of their expenses, handing over the surplus to the owner of the building. (Sub-s. 5.)

This section does not apply (a) to buildings expressly exempt from the operation of the P. H. Acts or any bye-laws made under those Acts, *e.g.*, buildings of railway and other companies (see s. 157, P. H. Act, 1875; s. 33, P. H. Act, 1907); (b) to any building erected to protect or to prevent the acquisition of rights to light; (c) to any temporary building set up as part of the plant (*e.g.*, scaffolding) to be used in connection with the construction, alteration or repair of any building or other work; but so far as regards only so much of this section as relates to plans, sections and specifications. (S. 27, sub-s. 6, P. H. Act, 1907.)

This last paragraph makes it necessary for a builder to get the council's permission to erect scaffolding (for example), but his application need not be accompanied with the plans, &c., referred to in sub-s. 1, *supra*.

Every building in an urban district which, after the adoption by the council of Part IFL., P. H. Act, 1890, is used as a place of public resort (for exceptions, see p. 49, *infra*), must be, to the council's satisfaction, substantially constructed, and supplied with ample and convenient means of ingress and egress for the use of the public, regard being had for the purposes for which the building is intended to be used and for the number of persons likely to be assembled there at one time.

The means of ingress and egress must, during the whole time the building is used as a place of public resort, be kept unobstructed to such extent as the council require.

An officer of the council may, on producing his authority, enter the building at all reasonable times to see that these provisions are carried into effect.

The occupier or manager, or, in the case of a building let for a period of less than a year, the owner, is liable to a penalty of 20*l.* if he fails to comply with the provisions of this section. But in the case of any alteration in the building being necessary

in order to give proper means of ingress and egress, the Court may refuse to impose a penalty until a reasonable time has been allowed for making the alteration.

“Place of public resort” includes a church, chapel, or other place of public worship, a theatre, public hall, ball-room, lecture-room, or any public place of assembly for persons admitted to it by tickets or payment, or used or constructed for any public purpose.

Private dwelling-houses used occasionally for these purposes are excepted, and the section does not apply to a church or other place of public worship used as such, before Part III. of this Act was adopted in the district. (S. 36, P. H. Act, 1890.)

N.B.—This section cannot be adopted by a rural council. (S. 50, P. H. Act, 1890.)

Roofs of buildings, platforms, balconies and other structures intended to be used to accommodate a number of persons on the occasion of any entertainment, public procession, open-air meeting, etc., must be safely constructed or secured to the satisfaction of the council’s surveyor.

There is a penalty of 50*l.* for using or allowing to be used a structure, etc., which has not been approved by the surveyor for the purpose. (S. 37, P. H. Act, 1890.)

N.B.—This section cannot be adopted by a rural council. (S. 50, P. H. Act, 1890.)

A person must not use any hoarding or similar structure which is in, or abuts on, or adjoins any street, for any purpose, unless it is securely fixed to the satisfaction of the council. There is a penalty of 5*l.*, and a daily penalty of 20*s.* for a contravention of this section. (S. 32, P. H. Act, 1907.)

N.B.—This section is not in force unless it, or the whole of Part II. of this Act, has been applied to the district by L. G. B. Order; s. 33 exempts railway and certain other companies from anything contained in Part II. of the Act.

Burial Grounds.**MORTUARIES.**

A district council may, and if required by the L. G. B. must, provide a mortuary. Bye-laws may be made for its management and charges for its use; and the council may also make provision for the decent and economical interment, at charges to be fixed in the bye-laws, of dead bodies that are brought to the mortuary. (S. 141, P. H. Act, 1875.)

N.B.—As to the removal to a mortuary of bodies of persons who have died from infectious disease, see s. 142, P. H. Act, 1875, and ss. 8, 9, 10, Infectious Diseases Prevention Act, 1890 (page 234).

The district council may provide and maintain a proper place (but not at a workhouse or at a mortuary) for *post-mortem* examinations, and can make regulations for its management. (S. 143, P. H. Act, 1875.)

THE COUNCIL AS THE BURIAL AUTHORITY.

A district council may become a burial authority in three different ways:—

- (a) The council may be the burial authority of the district as the successors of a local board of health, or of Improvement Commissioners who were constituted a burial board.
- (b) An urban district council, when there is in their district a burial board formed under the Burial Acts, 1852—1885, can by a resolution transfer to themselves the powers, duties, and liabilities of that board. (S. 62, sub-s. 1, L. G. Act, 1894.)

N.B.—In rural parishes the parish meeting have the exclusive right of adopting these Burial Acts for the parish. (S. 7, sub-s. 1, L. G. Act, 1894.) They can be adopted also for any part of an urban district, but only with the consent of the district council. (S. 62, sub-s. 2, L. G. Act, 1894.)

- (c) A district council, urban or rural, can provide a burial ground for their district (Public Health Interments Act, 1879), or a crematorium. (Cremation Act, 1902.)

No part of a cemetery is to be constructed within 100 yards of a dwelling-house, except with the consent in writing of the owner, lessee, and occupier of the house. And no ground not already used as a cemetery (*i.e.* in which interments have taken place) is to be used for burials within 100 yards of a dwelling-house without the consent above-mentioned; but such consent is not required in respect of a house which was erected after the land has been used or appropriated for burials. (Burial Act, 1906.) The distance must be measured from the walls of the dwelling-house itself. (*Wright v. Wallasey L. B.* (1887), 56 L. J. Q. B. 259.)

A crematorium must not be constructed nearer to a dwelling-house than 200 yards without the consent in writing of the owner, lessee, and occupier of the house, nor within 50 yards of a highway, nor in the consecrated part of a burial ground. (S. 5, Cremation Act, 1902.)

The plans and site of a proposed crematorium must be approved by the L. G. B., and it must not be used for cremations until the cremation authority (*e.g.*, a district council providing a crematorium or a cremation company) have certified to the Home Office that it is completed, built in accordance with the approved plans, and properly equipped. (S. 4, Cremation Act, 1902.)

A burial ground may be closed, and the opening of any new burial ground in a town without the approval of the L. G. B. (Burial Act, 1900) may be prohibited by an Order in Council of the Privy Council. (Burial Act, 1853.) And in such case no new burial ground must be provided or used in the town or within the limits prescribed in the Order without the previous approval of the L. G. B. (S. 6, Burial Act, 1853.)

But this approval is only required for the "providing and using" of a new burial ground, and not for the acquiring of land intended to be ultimately used as a burial ground. (*Ward v. Portsmouth Corporation*, (1898) 2 Ch. 191; 67 L. J. Ch. 489.)

A district council have the same powers of acquiring, constructing and maintaining a cemetery (Interments Act, 1879) or a crematorium (Cremation Act, 1902) as they have of establishing a mortuary under s. 141, P. H. Act, 1875.

This means that the acquisition of land and the making of contracts will be as provided by the P. H. Act, 1875.

The cemetery may be established within or without the district; but when it is to be outside the district, the council must give the same notices as are required in the case of proposed sewage works (see p. 316) outside the district. (S. 2, sub-s. 2, Interments Act, 1879.)

The council can accept a donation of land for a cemetery or of money or property for enabling them to establish a cemetery. (S. 2, sub-s. 3, Interments Act, 1879.)

When the district council exercise the functions of a burial board (*e.g.*, as the successors of Improvement Commissioners or by taking over the responsibilities of an existing burial board, see *supra*), their powers of establishing a cemetery or of making additions of new ground to a cemetery will be governed by the Burial Acts.

They can, with the consent of the vestry (*i.e.*, the inhabitants of the parish or parishes for which the burial ground is to be provided), purchase land for forming a cemetery, or purchase an existing cemetery, or contract for interments taking place in a cemetery. (S. 26, Burial Act, 1852.) If the vestry refuse this consent, the council can appeal to the L. G. B., who can authorize the council to expend and borrow such money as is required for providing and laying out a burial ground. (S. 6, Burial Act, 1855, and Burial Act, 1900.)

Contracts for work and things required for a burial ground, if over 100*l.* value, must be by tender, of which fourteen days' notice must be given by advertisement in the local newspapers. (S. 31, Burial Act, 1852.)

The Lands Clauses Act, 1845, with the exception of the provisions relating to compulsory purchase, apply to purchases of land for a cemetery by the burial authority. (S. 27, Burial Act, 1852.)

The expenses of providing and maintaining a cemetery established under the Interments Act, 1879, or a crematorium, will be defrayed in the same manner as the expenses incurred in the execution of the P. H. Act, 1875, and the council's borrowing powers will be governed by that Act.

When an urban district council are the successors of a local board or of Improvement Commissioners who were constituted a burial board, the expenses of carrying the Burial Acts into execution with regard to the cemetery and the sums required for the repayment of any loans, must be paid out of the district rate or from a separate burial rate. (Burial Act, 1860.)

When, however, an urban district council have transferred to themselves the duties and liabilities of a burial board in the district in pursuance of s. 62, L. G. Act, 1894, the expenses in connection with the burial ground will remain payable out of the poor rate, and will not become payable from the general district rate. (*R. v. Connah's Quay Overseers*, (1901) 2 Q. B. 174 ; 70 L. J. K. B. 651.)

The overseers must pay the sums required for these expenses on the receipt of the burial authority's certificate. (S. 19, Burial Act, 1852.) The repayment of loans, with the interest, is also chargeable to the poor rate. (S. 20, Burial Act, 1852.)

Money may be borrowed by the burial authority with the sanction of the vestry (s. 20, Burial Act, 1852) and of the L. G. B. (Local Authorities Treasury Powers Act, 1906). If the vestry refuse to consent to any expenditure or loan, the burial authority can appeal to the L. G. B. (S. 6, Burial Act, 1855, and Burial Act, 1900.)

The management of a cemetery provided under the Interments Act, 1879, is chiefly governed by the Cemeteries Clauses Act, 1847, which is incorporated with the 1879 Act. The Burial Acts govern the management of a cemetery established under those Acts. But in some respects provisions relating to the maintenance and government of cemeteries have been co-ordinated by the Burial Act, 1900.

Cemeteries may be laid out and embellished. (S. 11, Cemeteries Clauses Act, and s. 30, Burial Act, 1852.)

The necessary servants may be employed, *e.g.*, grave-diggers, gardeners, &c. (S. 37, Cemeteries Clauses Act, and s. 15, Burial Act, 1852.)

A chaplain can no longer be appointed by a district council for a cemetery provided by them. (S. 7, Burial Act, 1900.)

A district council can make bye-laws for the management of

a cemetery provided by them. (S. 141, P. H. Act, 1875, extended by Interments Act, 1879.)

Model bye-laws were published by the L. G. B. 16th February, 1881.

Regulations for the control of a burial ground can be made by a district council as the burial board, subject to any regulations that the L. G. B. can make in pursuance of s. 44, Burial Act, 1852. (S. 38, Burial Act, 1852.)

The council may make charges for the use of the burial ground. (S. 141, P. H. Act, 1875, as extended by Interments Act, 1879.)

S. 34, Burial Act, 1852, gives a similar right to make charges for interments in a burial ground provided under the Burial Acts.

Fees, to be approved by the L. G. B., may be charged by the council for the cremation of human remains in a crematorium provided by the council. These fees are to be deemed part of the funeral expenses, and can be recovered by the council from the persons liable to pay them. (S. 9, Cremation Act, 1902.)

Both Acts give the burial authority the power to sell the right of burial in a private vault (which exclusive rights may be sold either in perpetuity or for a limited time), and also the right to erect monuments and grave-stones in the cemetery, and to place tablets or monumental inscriptions in a chapel. (S. 40, Cemeteries Clauses Act, and s. 33, Burial Act, 1852.)

The bishop of the diocese may object to a monumental inscription in any part of the consecrated portion of a cemetery, and cause its removal. (S. 51, Cemeteries Clauses Act.)

Any question touching the fitness of any monumental inscription in a consecrated part of a cemetery provided under the Burial Acts is to be determined by the bishop of the diocese. (S. 38, Burial Act, 1852.) This section does not appear to prevent the bishop from initiating an objection to an inscription.

Burial grounds must be sufficiently fenced, but the requirements as to fencing contained in s. 15, Cemeteries Clauses Act, 1847, have been abolished by the 1900 Burial Act.

A district council, if the burial board, must do the necessary repairs to the walls or fences of a cemetery under their jurisdiction, when it has been closed by Order in Council. The

expense is to be defrayed out of the poor rate. (S. 18, Burial Act, 1855.) S. 21, L. G. Amendment Act, 1861, enables any council which have been constituted a burial board to repair the fences of a burial ground within their jurisdiction of which the use has been discontinued, the expense being defrayed out of the district rates. This section has been re-enacted in Part III. of Schedule V. to the P. H. Act, 1875. Presumably, the difference between these two enactments depends on whether the burial ground has been closed by Order in Council.

No body must be buried in a vault under a chapel or within 15 feet from the outer wall of it. (S. 39, Cemeteries Clauses Act.) And further, s. 83, P. H. Act, 1848 (which section of this repealed Act is specially re-enacted in Part. III. of the Schedule to the P. H. Act, 1875), prohibits the construction of a vault or grave within the walls of or underneath any church or other place of public worship built in an urban district after the 31st August, 1848.

The burial authority may regulate the position of a grave in a cemetery and the manner in which the grave is made. (S. 5, Burial Act, 1880.)

N.B.—The Burial Laws Amendment Act, 1880, is applied by the Burial Act, 1900, to cemeteries whether established under the Interments Act, 1879, or under the Burials Acts.

When the burial authority have acquired land for a cemetery, they may apply to the bishop of the diocese to consecrate any portion of it approved by the Home Office.

If the burial authority do not make this application within a reasonable time after a request in that behalf, and the Home Office is satisfied that a reasonable number of persons desire that a portion of it should be consecrated, and the consecration fees have been paid or are secured, the Home Office can apply to the bishop. The bishop may then consecrate, and the burial authority must make such arrangements as are necessary for the consecration. (S. 1, Burial Act, 1900.)

A new burial ground or cemetery must be divided into consecrated and unconsecrated parts in such portions, and the unconsecrated part must be allotted in such manner as is sanctioned by the Home Office. (S. 9, Burial Act, 1900.)

Part of a burial ground provided under the Interments Act, 1879, which has been consecrated or used for burials cannot be disposed of or used for other purposes. (S. 9, Cemetery Clauses Act, 1847.)

Unconsecrated ground set apart for purposes of burial must not be applied to any other purpose, except by the leave of the L. G. B. (S. 6, Burial Act, 1900.)

The burial authority may, at their own cost, erect a chapel for funeral services on any part of the cemetery which is not set apart for the exclusive use of any particular denomination. A chapel so erected after January 1st, 1901, must not be consecrated or reserved for the exclusive use of any particular denomination. But the burial authority may, at the request and cost of residents of a particular denomination, erect, furnish and maintain a chapel for funeral services according to the rites of that denomination, on the ground appropriated to its use (s. 2, sub-s. 2); and the Home Office may, by order, direct the burial authority to accede to such request if the estimated cost of the chapel has been tendered to the burial authority or is reasonably secured.

Subject as above, there is no longer any obligation on a burial authority to build a chapel within the consecrated portion of a cemetery provided under the Interments Act, 1879. (S. 2, Burial Act, 1900.)

MATTERS RELATING TO BURIAL SERVICE.

The burial authority must submit to the Home Office to be approved a table of fees to be received in respect of the services rendered by a minister of religion and by the sexton.

Fees for burial service must be the same in respect of burials in consecrated and unconsecrated ground. (S. 3, sub-s. 1, Burial Act, 1900.)

If this table of fees is not submitted after request made by the Home Office, the Home Office can draw up a table of fees. (S. 3, sub-s. 2.)

These fees must be collected by the burial authority and paid by them to the minister and sexton in such manner as is agreed upon or as is directed by the Home Office in default of agreement. (S. 3, sub-s. 3.)

No fee, except for services rendered by him, is to be paid to the incumbent of a parish in respect of any right of exclusive burial, or the erection of a monument or any other matter whatsoever, in a burial ground maintained by a burial authority. But when these special fees were payable in respect of a burial ground laid out and used as a burial ground before the passing of the Act (*i.e.*, prior to July, 1900), they are to continue to be paid during the incumbency of the parson, or for a period of fifteen years, whichever is longer.

The Ecclesiastical Commissioners, with the consent of the incumbent, can agree with the burial authority for a periodical or other payment to be made to the incumbent in commutation of these special fees. (S. 3, sub-s. 4, Burial Act, 1900.)

Where a portion of a cemetery which had been acquired by the burial authority before the passing of the 1900 Act had never been actually used for interments before that date, it was held that the incumbent had no right to these special fees. (*Young v. Kingston-on-Thames, &c. Joint Burial Committee*, (1907) 1 K. B. 416; 76 L. J. K. B. 382.)

No fees payable to churchwardens or others for parochial purposes, either by law or custom, are any longer to be paid by the burial authority (s. 3, sub-s. 4); and no fee, other than fees payable to a sexton for services rendered, is to be paid to any clerk or other ecclesiastical officer in respect of interments. (S. 3, sub-s. 5, Burial Act, 1900.)

The incumbent of the parish for which, or which is in the area for which, a burial ground has been provided must perform the funeral service in respect of his own parishioners and persons dying in his parish. (S. 7, Burial Act, 1900.)

N.B.—A district council have no longer any power to appoint a chaplain under the Cemetery Clauses Act (s. 7, Burial Act, 1900); though when there is a chaplain appointed previous to the 1900 Act coming into force, he will be entitled to perform the services in the consecrated part of the cemetery, as long as he continues in his office.

This obligation on the incumbent only applies to funeral services in respect of burials in consecrated ground. (S. 14, Burial Act, 1880.) And he is under no obligation to perform a funeral service before, at, or after a cremation; in case the

incumbent refuses, any other minister who is willing may officiate. (S. 11, Cremation Act, 1902.)

Notice of intention to bury in a burial ground belonging to the burial authority is to be given at such time and to such person as the burial authority direct. (S. 8, Burial Act, 1900.) The 48 hours limit imposed by the Burial Act, 1880, is removed by the Burial Act, 1900. A burial authority are under no legal obligation to notify the incumbent of the parish of an intended burial, that being the duty of the friends or relatives of the deceased; but a burial authority must not permit any other person except the incumbent of the parish to perform a burial service in the consecrated part of the cemetery (*Wood v. Headingley Burial Board*, (1892) 1 Q. B. 713), unless advantage is taken of the following provisions :

Notice may be given by the relation, friend, or legal representative having charge of, or being responsible for, the burial of a deceased person that the burial will take place without the rites of the Church of England (s. 1, Burial Act, 1880), and then the incumbent is relieved from performing the service.

This notice, which must be signed with the name and must state the address of the person giving it, must be left by him with the clerk of the burial authority. It must be to the effect of the form prescribed in Schedule A. to the Act. The burial authority may make bye-laws for enabling burials to take place in accordance with these provisions. (S. 1, Burial Act, 1880.)

The notice must state the day and hour when such burial is proposed to take place. If such time fixed is inconvenient on account of some other funeral service previously arranged to take place then, or is against the bye-laws, written intimation must be served on the person who gave the notice to the burial authority at what other hour of that day the burial can take place.

This intimation may be served by leaving it at this person's abode or at the house where the deceased is lying. But if the burial authority and the person giving the notice come to a mutual understanding about the alteration of time, there is no

need for this intimation to be given to him. (S. 3, Burial Act, 1880.)

The burial may take place at the option of the person having charge of it without any religious service or with such Christian service at the grave as he thinks fit; and the service may be conducted by anyone invited and authorized by this person to do so. (S. 6, Burial Act, 1880.) It is a misdemeanour to conduct a service in a disorderly manner, or to obstruct a service, or to deliver an address under colour of a service endeavouring to bring into contempt the Christian religion or the belief or worship of any Christian denomination, or the ministers or members of a denomination. (S. 7, Burial Act, 1880.)

A burial certificate in the form or to the effect of Schedule B. must be sent to the burial authority by the person in charge of such a burial on the day of the burial; and this burial must be entered in the register. (S. 10, Burial Act, 1880.)

N.B.—These provisions of the Burial Act, 1880, apply to burial grounds whether established by the district council under the Interments Act, 1879, or as the burial authority under the Burial Acts. (S. 9, Burial Act, 1900.)

MISCELLANEOUS.

All burials must be registered in the books to be provided and kept by the burial authority for the purpose. A copy of the registers must be sent to the registrar of the diocese. An officer must be appointed by the burial authority to register burials that take place in the burial ground. (S. 8, Burial Act, 1853, and Registration of Burials Act, 1864.) If there is a chaplain, appointed previous to the Burial Act, 1900, for a cemetery provided by a district council under the Interments Act, he must register the burials in the consecrated part of the cemetery; but if there is no chaplain, all burials in the consecrated and unconsecrated portions must be kept by the official appointed for that purpose. (S. 7, Burial Act, 1900.)

The Home Office regulations made by virtue of s. 7, Cremation Act, 1902, require the cremation authority (*i.e.*, the

district council, if they have provided a crematorium) to appoint a registrar, who must keep a register of cremations, and the entries must be made immediately after a cremation has taken place.

The Home Office can appoint a person to hold an inquiry into any matter relating to the consecration of part of a burial ground, or the building of a chapel, or the fixing, varying, or commuting the fees payable to a minister of religion or to a sexton. (S. 5, sub-s. 1.) The burial authority may be made to pay the costs of the inquiry and the authorized expenses of the person holding it as the Home Office directs. (S. 5, sub-s. 2, Burial Act, 1900.)

S. 7 of the Cremation Act, 1902, empowers the Home Office to make regulations for crematoria and cremations. These regulations were issued 31st March, 1903, and contain provisions relating to the maintenance and inspection of crematoria, the conditions under which cremation may take place, the disposition of the ashes, and the registration of cremations.

Amongst other provisions is one requiring the appointment by a cremation authority of a medical referee, on whose certificate alone a cremation is to be allowed. Various rules have been made for the guidance and direction of this officer.

He must be a properly qualified medical practitioner of not less than five years' standing. If otherwise qualified, a person holding the office of coroner or the medical officer of health of the district may be appointed medical referee.

A deputy medical referee must be appointed to act during the absence of the medical referee, or when that officer has been the medical attendant of the deceased person whose remains are to be cremated.

On making the appointment the cremation authority must send the name, address and qualification of the referee or his deputy to the Home Office.

There is a penalty of 50% for a breach of any of the Home Office regulations. (S. 8, Cremation Act, 1902.)

Bye-Laws.**PROVISIONS AS TO BYE-LAWS.**

Bye-laws made by a district council must be under the common seal of the council. (S. 182, P. H. Act, 1875.)

Bye-laws may impose penalties not exceeding 5*l.* for each offence for their contravention, and in case of a continuing offence a further daily penalty not exceeding 40*s.* after the council have given notice in writing of the offence to the offender. The bye-laws must be so framed as to allow of the recovery of any sum less than the full amount of the penalty. (S. 183.)

Bye-laws, except when it is otherwise provided (*e.g.*, bye-laws made under s. 13, P. H. Act, 1890, as to telegraph apparatus, and bye-laws under the Electric Lighting Act, 1882, which must be submitted for approval to the Board of Trade, and bye-laws under Part VII. P. H. Act, 1907, which must be confirmed by a Secretary of State), must be submitted to, and approved by, the L. G. B.

The council must give public notice of their intention to apply for the confirmation (or alteration) of bye-laws by means of advertisements in the local newspapers circulating in the district at least one month before the application is made; and during this period a copy of the proposed bye-laws (or alterations) must be open to inspection by the ratepayers at the council's offices.

The clerk must furnish any ratepayer applying for it with a copy of the proposed bye-laws (or alterations), on payment of sixpence for every hundred words contained in them. (S. 184.)

Bye-laws must be printed and hung up in the council's office, and a copy of them must be delivered to any ratepayer applying for the same.

A copy of a rural council's bye-laws must be sent to the overseers of every parish to which the bye-laws relate, to be deposited with the public documents of the parish. (S. 185.)

A copy of the bye-laws signed and certified by the clerk to be a true copy, and to have been duly confirmed, is evidence of the bye-laws in all legal proceedings. (S. 186.)

Bye-laws repugnant to the laws of England, or to the provisions of the P. H. Acts, will be invalid. (S. 182, P. H. Act, 1875.)

N.B.—Bye-laws, though confirmed by the L. G. B., will be invalid if *ultra vires* or unreasonable.

A bye-law is not necessarily invalid because a person is unable to comply with its requirements. A district council made a bye-law prohibiting the construction of cesspools at a less distance than 50 feet from a dwelling house. The owner of an old cesspool had filled it up and constructed a new cesspool within 17 feet from his house (this being the extreme limit the extent of his premises permitted). It was held that the bye-law was not unreasonable on account of the 50 feet limit fixed by it, and that it was not invalid because the owner of the premises was unable to comply with it, there being no obligation imposed upon him by the bye-law to move his old cesspool and to construct a new one. (*Simmons v. Malling R. D. C.*, (1897) 2 Q. B. 433; 66 L. J. Q. B. 585.)

A bye-law which required every person constructing for use as a carriage road a new street to construct "on each side of such street a proper channel not less than 12 inches wide and 6 inches deep, either of granite cubes laid on a bed of cement concrete at least 6 inches in thickness, or otherwise in a suitable manner and with suitable materials" was held not to be *ultra vires* on the ground of being inconsistent with s. 150, P. H. Act, 1875, or s. 6, Private Street Works Act, 1892, and was held not to be bad for uncertainty. "The next objection is that the bye-law is uncertain. But it seems to me that this bye-law only sets up a standard and then gives a reasonable latitude if that standard should not in fact be necessary": Lord Alverstone, C.J. (*Leyton U. D. C. v. Chew*, (1907) 2 K. B. 283; 76 L. J. K. B. 781.) But a bye-law which required a person to kerb the footpath to the satisfaction of the local authority before he began to erect any building in a new street was held to be bad for being unreasonable. (*Rudland v. Mayor of Sunderland* (1885), 52 L. T. 617.)

A district council cannot ignore their own bye-laws. "Bye-laws properly made have the effect of laws; a public body cannot, any more than private persons, dispense with laws

that have to be administered; they have no dispensing power whatever": Day, J., in *Yabbicom v. King*, (1899) 1 Q. B. 444; 68 L. J. Q. B. 560. In this case the local authority had approved of building plans which did not comply with the requirements of their bye-laws.

In *Baxter v. Bedford Corporation* (1885), 1 T. L. R. 424, the corporation's bye-laws required that two days' notice should be given to the surveyor before drains were covered. On the facts of the case it was held that the surveyor had not waived the notice, and that he could not dispense with the notice. "The corporation could not dispense with the law, which was not for their benefit but for the benefit of the public." (*Per Cave, J.*)

In *Salt v. Scott Hall*, (1903) 2 K. B. 245; 72 L. J. K. B. 627, Channell, J., recommended that in their building bye-laws a council ought to reserve to themselves the right to dispense with their strict observance in exceptional cases. "All bye-laws relating to the construction of buildings ought to have something in the nature of a dispensing power in them, enabling the local authority or surveyor, or somebody or other, to say that a particular building is of an exceptional character, and that the hard and fast rules laid down by the bye-laws as to the mode of construction ought not to apply to that particular building."

LOCAL GOVERNMENT BYE-LAWS.

A district council can make bye-laws concerning a variety of matters relating to the local government of the district. To enumerate a few: bye-laws may be made for regulating the use of cabmen's shelters, common lodging-houses, markets, public libraries, baths, &c. &c. These are dealt with elsewhere; but there are a few subjects of local government, with regard to which bye-laws may be made, which it is convenient to deal with separately.

In districts where s. 82, P. H. Act, 1907, is in force, the district council may, for the purpose of preventing danger, obstruction or annoyance to persons using the seashore, make and enforce bye-laws to—

- (a) Regulate the erection or placing on the seashore of any booths, tents, sheds, stands and stalls, or vehicles for

the sale of any article, or any shows, exhibitions, performances, swings, roundabouts, or other erections, vans, photographic carts, or other vehicles, and the playing of any games ;

- (b) Regulate the use of the seashore for riding and driving ;
- (c) Regulate the selling and hawking of any article on the seashore ;
- (d) Provide for the preservation of order and good conduct among persons using the seashore.

No bye-laws affecting the foreshore below high water mark can come into operation until the consent of the Board of Trade has been obtained. (S. 82, P. H. Act, 1907.)

N.B.—Bye-laws made under this section must be confirmed by a Secretary of State instead of by the L. G. B. (s. 9, P. H. Act, 1907), and this section will only be in force in districts to which it or Part VII. of the P. H. Act, 1907, has been applied by order of the Secretary of State.

In districts where s. 84, P. H. Act, 1907, is in force, the council may, to prevent danger, obstruction, or annoyance to persons using the esplanades or promenades in the district, make bye-laws prescribing the nature of the traffic for which they may be used, for regulating the selling or hawking of any article on them, and for the preservation of order and good conduct among persons using them. (S. 85, P. H. Act, 1907.)

N.B.—Bye-laws under this section must be confirmed by a Secretary of State and not by the L. G. B. (s. 9, P. H. Act, 1907), and this section will only be in force in districts to which it has been applied by order of a Secretary of State.

An urban district council, where the population of the district exceeds 10,000 according to the last census, can make bye-laws :—

- (1) For the regulation and control of hoardings and similar structures used for the purpose of advertising when they exceed 12 feet in height.
- (2) For regulating, restricting, or preventing the exhibition of advertisements which injuriously affect the amenities of a public park or pleasure promenade, or which disfigure the natural beauty of a landscape.

But these bye-laws must exempt from their operation hoardings and structures in use for advertisement purposes at the time the bye-laws are made, and any advertisements exhibited at that time, for such a period, not less than five years, as the council may think fit.

Bye-laws made under this Act must be confirmed by a Secretary of State, and bye-laws made by a County Council will not be in force in districts of which the councils have the power to make bye-laws under this Act.

Contravention of these bye-laws entails a penalty of 5*l.*, and a daily penalty of 20*s.* after a conviction of an offence against them. (Advertisements Regulation Act, 1907.)

An urban council can make bye-laws for regulating (a) the conduct of proprietors and drivers of hackney carriages and omnibuses which have been licensed by the council to ply for hire in the district; (b) the manner in which the number of the carriage, corresponding with the number of the license, shall be displayed; (c) the number of persons to be carried; (d) the stands for carriages, the fares, and the publication of the fares; (e) and for securing the re-delivery of articles left accidentally in carriages, and for fixing the charges payable for the return of such property. Also, bye-laws may be made for securing the fitness of an omnibus and the harness; for regulating the number and fitness of the animals drawing it; for securing that proper lights be carried; and for preventing calling out and toutting by drivers and conductors for passengers. (S. 171, P. H. Act, 1875, incorporating s. 68 and s. 9, Towns Police Clauses Acts, 1847 and 1889.)

The proprietors and conductors of horses and donkeys standing for hire may be licensed in the same manner as proprietors and drivers of hackney carriages, and bye-laws may be made for fixing the stands and rates of hire of these animals and for regulating the qualification and conduct of the persons in charge.

Similarly, the proprietors and boatmen of pleasure boats may be licensed and bye-laws made for regulating the numbering and naming of the vessels, their mooring-places, the number of persons to be carried in them, &c. (S. 172, P. H. Act, 1875.)

An urban council which have adopted Part III. of the Act

can make bye-laws for the prevention of danger from whirligigs and swings when driven by steam power, and from the use of firearms in shooting ranges and galleries. (S. 38, P. H. Act, 1890.)

Commons.

With the consent of the County Council the district council may aid persons in maintaining rights of common; and for this purpose the council can institute and defend legal proceedings, or take such other steps—*e.g.*, contribute towards some other person's legal expenses incurred in contesting these rights (*R. v. Norfolk C. C.*, (1901) 2 K. B. 268; 70 L. J. K. B. 575)—as they deem expedient. (S. 26, L. G. Act, 1894.)

The council, with the consent of the County Council, can exercise any of the following powers (exercisable under s. 8, Commons Act, 1876) in relation to a common:—

- (a) They may undertake to contribute towards the maintenance of recreation grounds, paths or roads on the common.
- (b) Pay compensation to the commoners in order to secure greater privileges on the common for the benefit of the district.
- (c) Purchase saleable rights in commons or a commoner's tenement with rights of common annexed to it, in order to prevent the extinction of the rights of common.
- (d) With the consent of the persons representing one-third in value of the interests in the common make application to the Board of Agriculture for the regulation of the common.

The expenses incurred by the council in the exercise of the above powers are to be defrayed as under the P. H. Act, 1875.

Notice of an application to the Board of Agriculture for the inclosure or regulation of a common in the district must be served on the district council. (S. 26, L. G. Act, 1894.)

An urban or rural district council can make a scheme with a view to spending money on the drainage, levelling and improvement of a common, and for making bye-laws for its regulation. (S. 1, Commons Act, 1899.)

This scheme must be in the form prescribed by, and in accordance with, the Board of Agriculture's Regulations of October 2nd, 1899. These regulations require that the district council should advertise in the local press their intention to make a scheme, and serve notice of this intention on the parish councils in the district and on the lord of the manor three months before the scheme is made.

The scheme must be approved by the Board of Agriculture; but if within the period of three months specified above the lord of the manor, or one-third of the persons representing the interests in the common, give notice in writing to the Board objecting to a scheme for the regulation of the common, no further steps can be taken. (S. 2, Commons Act, 1899.)

The scheme may include provision for securing free access to any particular point of view on the common; for preserving particular trees or objects of historical interest; for reserving, where a recreation ground is not set out, a right to play games on the common, care being taken to cause the least possible injury to persons having interests in the common; for setting out roads and paths across the common. (S. 1, Commons Act, 1899.)

Further, the scheme may provide for the execution by the council of works of drainage, levelling and fencing for the protection and improvement of the common; also for the maintenance of the footpaths. A portion of the common may be set out for games and for a cricket ground, which may be temporarily inclosed with an open fence to protect it from cattle. Seats may be placed and trees planted and protected by temporary guards; but no pavilion or shelter must be erected without the consent of the lord of the manor or person owning the soil of the common.

Subject to the approval of the L. G. B., the district council may make bye-laws in respect of the common, for preventing encroachments or the deposit of rubbish, &c., and the illegal taking of gravel or cutting turf, heather or trees; injury to the seats and notice boards and to fences or trees by posting bills on them; bird catching, the taking birds' eggs or illegal shooting on the common; for regulating games, and for preventing or regulating vehicles being driven or horses exercised on the

common ; for the exclusion and removal of gipsies, card-sharpers and other undesirables ; for regulating the place and mode in which the commoners may exercise their rights of taking materials and cutting trees and undergrowth on the common ; for preventing persons from “illegally” turning out animals to graze on the common ; and generally for the protection of the common and its use by the public for exercise and recreation.

N.B.—The expression “illegally” refers to the exercise by persons other than the commoners of the rights of common such as turning cattle out to graze, cutting turf, or gathering firewood and fuel on the common. (Board of Agriculture’s Regulations, October 2nd, 1899.)

When a scheme has been approved by the Board of Agriculture the management and regulation of the common will be vested in the district council (s. 3, Commons Act, 1899) ; but a rural district council can delegate the management to a parish council, in which case the parish council will be, for this purpose, in the position of a parochial committee. (S. 4, Commons Act, 1899.)

A parish council may contribute towards the expenses incidental to the preparation and execution of a scheme by a rural district council. (S. 5, Commons Act, 1899.)

No interest in the common is to be taken away by the district council without the consent of and without compensation (to be ascertained in case of dispute by arbitration under the Lands Clauses Acts) being paid to the person entitled to it. (S. 6, Commons Act, 1899.)

The council may acquire by gift or purchase by agreement the fee simple or any rights of a common regulated under this Act. (S. 7, Commons Act, 1899.)

An urban district council, with a view to the benefit of the inhabitants of their district, and subject to the approval of the L. G. B., may contribute to the expenses of any other district council in the execution of a scheme. (S. 12, Commons Act, 1899.)

A council’s expenses under this Act are to be defrayed as expenses under the P. H. Acts, and the council can borrow money for the purposes of this Act as under and subject to the

restrictions of ss. 233—244, P. H. Act, 1875. (S. 11, Commons Act, 1899.)

A "common" includes town and village greens; but a scheme under this Act will not apply to any common regulated under the Metropolitan Commons Acts, 1866 and 1869, or by a Provisional Order under the Inclosure Acts, 1845 to 1882, or which is subject to any private or local Act for its preservation as an open space, or to bye-laws made by a parish council under s. 8, L. G. Act, 1894. (S. 14, Commons Act, 1899.)

Contracts.

A district council may enter into any contracts necessary for carrying the P. H. Acts into execution (s. 173, P. H. Act, 1875); but a committee of the council cannot be authorized by the council to make contracts on behalf of the council. (S. 56, sub-s. 1, L. G. Act, 1894.)

Every contract of a value exceeding 50*l.* made by an urban council must be in writing, and sealed with the council's seal. (S. 174, sub-s. 1, P. H. Act, 1875.) (As to contracts by rural councils, see, *infra*, *Lawford v. Billericay R. D. C.*)

"In order to come within the words of the enactment, the contract must be one of which the value exceeds 50*l.* at the time when it is entered upon." (Lush, L.J., in *Eaton v. Grantham Corporation* (1881), 7 Q. B. D. 529; 50 L. J. Q. B. 444.) In that case a doctor was employed under a verbal agreement by the local authority to attend fever patients during an epidemic at a specified daily fee. His charges exceeded 50*l.*, though at the time the agreement was made it was not foreseen that they would amount to such a sum. The corporation had to pay, in spite of the agreement not being under seal.

If work has been done for a council under a contract—the work being necessary in carrying out some purpose for which the council have been created—the fact that the contract is not under seal will be no defence to a claim to be paid under it (*Lawford v. Billericay R. D. C.*, (1903) 1 K. B. 772; 72 L. J. K. B. 554), provided that the contract is not an illegal one. (See OFFICERS OF COUNCIL, p. 283.) In the *Billericay* case the plaintiff, an engineer, had been employed by a com-

mittee of the council to make plans, &c. for a drainage scheme. The acts of the committee were approved and confirmed by the council, so as to constitute a contract between the council and the plaintiff. The contract was not under seal; but it was held that the plaintiff was entitled to recover from the council payment for the services he had rendered.

A contract for the execution of sewerage works, under the seal of the council, conferred on the engineer having the management of the contract the usual power to vary the manner in which the works under it were to be carried out. A variation was ordered and accordingly executed by the contractor. It was held that this variation could be made, and that a verbal compromise of a dispute which had arisen over this variation of the work was perfectly valid, although it was not reduced to writing nor under the seal of the council. (*Williams v. Barmouth U. D. C.*, (1897) 77 L. T. 383.)

An unsealed contract may be subsequently confirmed by the council's seal being affixed to it. (*Brooks, Jenkins & Co. v. Torquay Corporation*, (1902) 1 K. B. 601; 71 L. J. K. B. 109.)

A contract must specify the work to be done and the materials to be furnished, the price to be paid, and the time in which the contract is to be performed, and shall specify some pecuniary penalty to be paid in case the terms of the contract are not duly performed. (S. 174, P. H. Act, 1875.)

N.B.—These provisions are obligatory. (*British Insulated Wire Co. v. Prescott U. D. C.*, (1895) 2 Q. B. 463; 64 L. J. Q. B. 811.)

Before entering upon a contract the council must obtain from their surveyor a written estimate of the probable expense of executing the work and of the annual expense of keeping it in repair; also a report as to the most advantageous mode of contracting, *i.e.*, whether only for the execution of the work or for its execution and maintenance for a term of years, or otherwise. And if the proposed contract amounts to 100*l.* or upwards, the council, before making it, must give at least ten days' public notice of the nature and purpose of the contract, and tenders for its execution must be invited by the council. The council must also require and take sufficient security for its due performance.

Contracts entered into in conformity with these provisions by

the council and duly executed by the other parties to it will be binding on the council's successors (*e.g.*, if a district is absorbed into another district) and on the other parties' executors, assigns or successors. The council may compound with a contractor or other person in respect of any penalty he has incurred on account of the non-performance of the contract. The composition may be in money or in the form of such other recompense as the council think proper. (S. 174, P. H. Act, 1875.)

District Council.

CONSTITUTION OF DISTRICT COUNCIL.

The County Council, if satisfied that a *prima facie* case for the proposed alteration has been made out, can, after holding a local inquiry, make an order for—

- (i) the alteration or definition of the boundary of a parish or of a district other than a borough ;
- (ii) the division of a district or the union of districts, or of a parish or the transfer of a parish or part of it to another parish ;
- (iii) the conversion of a rural into an urban, or of an urban into a rural district, or for the transfer of a district or part of it to another district, or the formation of a new urban or rural district ;
- (iv) the division of an urban district into wards ;
- (v) the alteration of the number of wards, or of the boundaries of a ward, or of the number of members of a district council, or of the apportionment of members among wards.

Except in the case of matters referred to in (iv) and (v), the County Council's order must be submitted to the L. G. B. for confirmation. The order may be petitioned against by one-sixth of the electors in the area affected, and the L. G. B. must in such event hold a local inquiry before deciding whether or not the County Council's order shall be confirmed.

Provision must be made where necessary for the adjustment of any property, debts and liabilities affected by the creation, constitution, or extension of an urban district. (S. 54, sub-s. 1 (e), L. G. Act, 1894.)

The authorities interested may make agreements for the purpose of the adjustment of any property, income, debts, liabilities and expenses affected by the order. (S. 68, L. G. Act, 1894.)

N.B.—"‘Income’ means income presently enjoyed . . . and does not include income which may hereafter be derived from the making of rates." (Lord Davey, in *Caterham U. D. C. v. Godstone R. D. C.*, (1904) A. C. 171 ; 73 L. J. K. B. 589.) In this case the parish of Caterham, which had been part of the Godstone rural district, was formed by the County Council into an urban district. It was held that in proceedings for an adjustment of property, &c. the Godstone council could not claim as "income" a sum representing the prospective loss in highway rates incurred by the severance of the Caterham area from their district. But an agreement for a compromise of their respective claims, even though one of the claims is not well founded in law, *e.g.*, is for compensation for loss of rateable area, is a valid agreement. (*Holsworthy U. D. C. v. Holsworthy R. D. C.*, (1907) 2 Ch. 62 ; 76 L. J. Ch. 389.) The fact that two local authorities have made one agreement for adjustment of property will not preclude one of them from requiring a further or supplemental agreement, and, failing that, an arbitration. (*St. Thomas R. D. C. v. Heavitree U. D. C.* (1902), 86 L. T. 153.)

The agreement may provide for the transfer or retention of any property, debts or liabilities, and for the joint user of any property subject to payment by one party to the other.

Payments in respect of the salary or remuneration of an officer or other person may be agreed upon.

These payments may be annual, or (except in the case of a salary or remuneration) by way of a capital sum, or of a terminable annuity for such period as the L. G. B. may allow.

An agreement which relates to the joint user of property in which a board of guardians is interested must be approved by the L. G. B.

In default of an agreement, the adjustment must be referred to arbitration in accordance with the Arbitration Act, 1889. The arbitrator has power as to costs, and his award may

provide for any matter for which an agreement might have provided.

Any sum required to be paid by a district council for the purposes of adjustment may be paid as part of the general expenses, or out of any special fund with the L. G. B.'s approval. If it is a capital sum that is required to be paid, the council can borrow the necessary money on the security of the rates and funds in the council's control. A capital sum paid to a council must be treated as capital and applied, with the sanction of the L. G. B., either in repayment of debt or for any other purpose for which capital money may be applied. (S. 68, L. G. Act, 1894.)

The County Council can, by order, from time to time fix or alter the number of guardians or rural district councillors to be elected for each parish in the county.

The County Council have for these purposes the same powers of adding parishes to each other and of dividing parishes into wards as the L. G. B. has under the Poor Law Acts for the election of guardians. (S. 60, L. G. Act, 1894.)

If a district council become unable to act, whether from failure to elect or otherwise (*e.g.*, by a general resignation of members), the County Council can order elections to be held, and can appoint persons to form the district council until the newly-elected members come into office. (S. 59, sub-s. 5, L. G. Act, 1894.)

The County Council may employ a district council as their agents for transacting any of the county's administrative business in the district. (S. 64, L. G. Act, 1894.)

A district council can, with the sanction of the County Council, change their name and the name of their district. The district council must notify the L. G. B. of the change. (S. 55, sub-s. 3, L. G. Act, 1894.)

The L. G. B. can, by order, permanently (P. H. (Ships) Act, 1885) constitute the council of a district which forms part of or which abuts on a port the port sanitary authority. (S. 287, P. H. Act, 1875.) "Port" means a port as established for the purposes of the Customs laws.

The jurisdiction of the council in such case will extend over

the waters within the limits of the port. (S. 288, P. H. Act, 1875.)

TRANSACTION OF BUSINESS.

An urban district council must provide and maintain offices necessary for the transaction of the business of the council and their officers. (S. 197, P. H. Act, 1875.)

A rural district council are entitled to use for their meetings and business the board room and offices of the guardians at all reasonable hours. Any difficulty as to what hours are to be considered reasonable is to be settled by the L. G. B. (S. 59, sub-s. 3, L. G. Act, 1894.)

No district council meeting must be held in premises licensed for the sale of intoxicating liquors unless no other suitable room is available for the meeting, either free of charge or at a reasonable cost. (S. 61, L. G. Act, 1894.)

Every district council must hold an annual meeting, and other meetings for the transaction of business once at least in each month, and at such other times as may be necessary. (S. 199, P. H. Act, 1875; s. 59, sub-s. 1, L. G. Act, 1894.)

The rules relating to the meetings of local boards contained in the unrepealed part of Schedule I. of the P. H. Act, 1875, are applied (with the necessary change of style), by s. 59, sub-s. 1, L. G. Act, 1894, to urban and rural district councils. These rules are as follows :—

- (i) The council must from time to time make regulations as to the summoning, notice, place, management and adjournment of meetings, and generally with respect to the transaction of their business.
 - (ii) No business must be transacted at a meeting unless at least one-third of the full number of members are present; subject to this qualification, that a larger quorum than seven is not required.
- (Rules (iii), (iv), (v) relate to the appointment of the chairman; see *infra*.)
- (vi) The names of the members present, as well as of those voting on each question, must be recorded so as to show whether each vote given was for or against the question.

- (vii) Every question at a meeting is to be decided by a majority of votes of the members present and voting on the question.
- (viii) In case of an equal division of votes, the chairman has a second or casting vote.
- (ix) The proceedings of a meeting of the council will not be invalidated by any vacancy among the members, or by any defect in the election of the council, or in the election, selection, or qualification of any members.
- (x) Minutes of proceedings at a meeting, and copies of any orders made or resolutions passed at a meeting, if signed by the chairman of that meeting or by the chairman of the next ensuing meeting, are evidence in all legal proceedings.

N.B.—A district council, it would seem, can exclude the general public or any particular member of the public from the meetings of the council. (*Tenby Corporation v. Mason*, "The Times," Nov. 23rd, 1907.)

- (iii) The council must at their annual meeting appoint a chairman for one year, to preside at all meetings at which he is present.

N.B.—There is no enactment preventing the chairman from presiding at a meeting of the council for the election of a chairman for the ensuing year, or from giving his casting vote on such an occasion, even though he may be a candidate for the office.

- (iv) If the appointed chairman dies, or resigns, or becomes incapable of acting, another must be appointed to take his place for the remainder of the term of office.
- (v) If the chairman is absent from any meeting at the time appointed for holding it, the members present must appoint one of their number to act as chairman of the meeting. (Rules in Schedule I., P. H. Act, 1875.)

The chairman of a district council may be elected from outside the council (or board of guardians), provided that he is not disqualified for holding the office under any of the provisions of s. 46, L. G. Act, 1894. (S. 59, sub-s. 1, L. G. Act, 1894.)

The council may appoint a vice-chairman from among their number to hold office for a year, and he, in the absence or

during the inability of the chairman, is to have the authority of the chairman and to act in his place. (S. 59, sub-s. 2, L. G. Act, 1894.)

The chairman, unless a woman or personally disqualified by any Act of Parliament, is by virtue of his office to be a justice of the peace for the county. He must, before acting as justice, take the necessary oaths. (S. 22, L. G. Act, 1894.) But a chairman who has been re-elected to the chairmanship of the council on the expiration of the previous term of office may continue to act as justice without again taking the oaths. (Chairmen of District Councils Act, 1896.)

The council can appoint committees, consisting either wholly or partly of members of the council.

A committee will not hold office beyond the next annual meeting of the council, when fresh committees may be appointed.

The acts of a committee must be submitted to the council for approval.

In the case of a committee appointed for any of the purposes of the Public Health or Highway Acts, the council may authorize it to institute any legal proceedings, or to do anything the council might do except the raising of a loan, the making of a rate, and the making of a contract. (S. 56, L. G. Act, 1894.)

The quorum, proceedings, and place of meeting of committees must be as directed by the council. The chairman of a committee has a casting vote. (Part IV. Schedule, L. G. Act, 1894.)

A rural district council may, at a meeting specially convened for the purpose, form a parochial committee for any contributory place, for the administration of the P. H. Acts there. (S. 202, P. H. Act, 1875.)

This committee may consist wholly of members, or partly of members and partly, where there is a parish council, of parish councillors (s. 15, L. G. Act, 1894), or partly, where there is no parish council, of persons in the contributory places assessed to poor rate. (S. 202, P. H. Act, 1875.)

Casual vacancies in this committee may be filled up by the council within six weeks of their occurrence. (S. 203, P. H. Act, 1875.)

This committee is to be deemed the agent of the council, and it can incur expenses in respect of the contributory place as the council prescribe. It must report its expenditure to the council when required to do so, and, if legally incurred, these expenses must be discharged by the council.

The formation of a parochial committee will not relieve the council of any of their lawful obligations. (S. 202, P. H. Act, 1875.)

But instead of appointing a parochial committee, a rural district council may delegate similar powers to a parish council. (S. 15, L. G. Act, 1894.)

CO-OPERATION BETWEEN LOCAL AUTHORITIES.

On the application of the councils of any urban or rural districts, the L. G. B. may by Provisional Order form their districts, or any parts or contributory places of them, into a United District under the government of a Joint Board.

A United District may be so formed for (a) procuring a common water supply; (b) making a main sewer or carrying into effect a system of sewerage for the use of the districts or contributory places; (c) any other purposes of the P. H. Act, *e.g.*, a joint burial ground. (S. 279, P. H. Act, 1875.)

The constitution, powers, duties, and liabilities of a Joint Board will be as determined by the Provisional Order.

The Joint Board will exercise its powers and be subject to its liabilities to the exclusion of and apart from the councils of the component districts; but the Joint Board may delegate to the council of a component district the exercise of any of its powers. (S. 281, P. H. Act, 1875.)

The cost of forming a Joint Board is a first charge on the rates leviable in the United District. (S. 279, P. H. Act, 1875.)

The expenses of a Joint Board, unless otherwise directed by the Provisional Order, must be defrayed out of a common fund to be contributed to by the component districts or places in proportion to the rateable value in each.

This value is to be ascertained from the valuation list in force for the time being (s. 283, P. H. Act, 1875), and without any deductions in respect of the properties which are entitled to a reduced assessment under s. 211 and s. 230, P. H. Act, 1875.

(*Darenth Main Valley Sewerage Board v. Dartford Union* (1887), 19 Q. B. D. 270; 56 L. J. Q. B. 615.)

To obtain payment of the contributions from the component districts, the Joint Board must issue its precept to each council, stating the sum due and when and to whom it is to be paid.

In the case of a rural council this contribution is to be deemed to be "general" expenses for the purposes of its recovery by the Joint Board; and to obtain payment of the sums due from contributory places in a rural district, the Joint Board can issue its precept for the amount to be paid to the overseers, and if the precept is not complied with can proceed against the overseers for the amount due.

If an urban district council fail to pay their contribution, the Board can sue the council for the amount in an action of debt (s. 284, P. H. Act, 1875), or it may proceed under s. 292, *sequitur*. That is to say, the Joint Board can appoint an officer to levy a rate on the ratepayers in the district or by issuing precepts, if a rural council are in default, to the overseers for the amount required.

In estimating the sum so required, the Joint Board is entitled to make an addition of 10 per cent. to defray expenses of collection. But any surplus, after the expenses have been paid, must on the application of the defaulting council be refunded by the Joint Board. (S. 292, P. H. Act, 1875.)

District councils may concur with other district councils or with parish councils in appointing out of their respective bodies a Joint Committee for any purpose in which they are jointly interested.

The committee may be invested, with or without restrictions, with any powers which the appointing councils could exercise in their particular districts.

There cannot be delegated to a Joint Committee the power to borrow money or to make a rate.

The Joint Committee will cease to hold office after fourteen days from the next annual meeting of the councils who appointed it.

The expenses of a Joint Committee are to be defrayed by the appointing councils in such proportions as may be agreed upon, or, in case of dispute, as the County Council determine. (S. 57, L. G. Act, 1894.)

Provision was made by s. 53, L. G. Act, 1894, to meet the case of an area in which, at the time when the L. G. Act, 1894, came into force, any of the "Adoptive Acts" were in force, which area was partly in a rural parish and partly in an urban district. Until other provision was made, the powers under these "Adoptive Acts" were to be exercised by a Joint Committee of the parish and district councils.

The "Adoptive Acts" referred to are—(a) the Lighting and Watching Act, 1833; (b) the Baths and Washhouse Acts; (c) the Burial Acts; (d) the Public Improvements Act, 1860; and (e) the Public Libraries Acts.

When a Joint Committee is established in pursuance of s. 53, L. G. Act, 1894, for the control of a burial ground under the Burial Acts, the expenses of the committee, any receipts, and the money borrowed must be divided by the councils appointing the committee in such proportion as they agree upon, or, in default of agreement, as is settled by the County Council, or by the L. G. B. if one of the councils is a county borough authority.

A council desirous of borrowing money for the expenses of the Joint Committee must obtain the sanction of the L. G. B.

Any difference arising as to the constitution of this committee is to be settled by the L. G. B.

The councils appointing this Joint Committee are to determine by regulations the quorum, proceedings and place of meeting of the committee. (L. G. (Joint Committees) Act, 1897.)

Apart from the above-mentioned provisions enabling the formation of Joint Boards and Joint Committees, district councils may combine for the purpose of executing and maintaining any works that may be for the benefit of their respective districts.

All moneys which a council agree to contribute for defraying expenses incurred in pursuance of a combination under this section are to be defrayed as though they were incurred within the district (s. 285, P. H. Act, 1875), *i.e.*, in a rural district they will be "general" or "special" expenses, according to the definition in s. 229, P. H. Act, 1875.

A district council may, with the consent of the council of an adjoining district, do in that district any of the works and things they can do in their own district, on such terms,

monetary and otherwise, as are agreed upon between them. (S. 285, P. H. Act, 1875.)

N.B.—S. 32, P. H. Act, 1875, with regard to sewage works and the construction of sewers, and ss. 53 and 54, relating to works for water supply outside the district, require that notice of the intended works must be given to (amongst others) the council of that district wherein the works are proposed to be carried out.

The sanction required by s. 285 is in addition to the notices required to be given by ss. 32, 53, 54 (*supra*), and does not relieve a council from the obligation of complying with any of those enactments. (*Jones v. Conway and Colwyn Bay Joint Water Supply Board*, (1893) 2 Ch. 603; 62 L. J. Ch. 767.)

In *Withington L. B. v. Manchester Corporation*, (1893) 2 Ch. 19; 62 L. J. Ch. 393, it was held that the powers given by s. 131, P. H. Act, 1875, to provide a hospital were not limited by this s. 285, and that it was not necessary for a local authority proposing to erect a hospital on their own land which was in the district of another local authority to get that adjoining authority's consent. In this case Chitty, J., declined to define what were the "works and things" referred to in s. 285; but his decision that "the building and providing of a hospital by a local authority on their own ground in an adjoining district are not the kind of works and things to which s. 285 was intended to apply" was approved of by the Court of Appeal.

The Public Health and Local Government (Conferences) Act, 1885, provides for the expenses incurred by representatives of a district council in attending public health conferences being paid out of the rates.

Regulations have been made by L. G. B. Orders of the 13th May, 1891, and 28th December, 1896, which are to the following effect:—

- (a) These expenses are only to be paid for attendance at a Central Conference, or at a conference convened for an area including the district from which the representatives of the council are sent, and which is held at a place not distant more than 100 miles from the district.
- (b) The attendance of the council's representatives at a conference must be expressly authorized by a resolution of the council; and four days' notice in writing of the

proposed resolution must be given to every member before the meeting at which this resolution is brought forward.

- (c) Not more than two representatives can be sent; and if the conference is held at a place more than fifty miles distant, only one representative may be sent.

The council can determine by resolution how many copies of a conference report shall be bought.

L. G. B.'s AND COUNTY COUNCIL'S POWERS OVER DISTRICT COUNCIL.

The L. G. B. can, on the application of a district council, repeal or alter the whole or any part of a local Act in force in the district, except an Act for the conservancy of rivers, or an Act which confers powers or privileges on persons for their pecuniary benefit in regard to public health matters.

The repeal or alteration of a local Act must be by Provisional Order; and this Order may extend the application of the local Act, or may exclude any portion of the district from its application. (S. 303, P. II. Act, 1875.)

It may here be remarked that the P. II. Acts, 1875 and 1907, are in addition to, and not in derogation of, the enactments contained in any local Act in force in a district. (S. 341, P. II. Act, 1875, and s. 11, P. II. Act, 1907.)

When the provisions are similar, proceedings in respect of them may be instituted by the council under either Act; but a person cannot be punished for the same offence under both Acts, nor are the council exempt, by reason of a local Act, from performing any duty imposed on them by the P. II. Act, 1875. (S. 340, P. H. Act, 1875.)

On the application of an urban district council, the L. G. B., by order, can confer on the council or some other representative body in the district the powers of appointing overseers and assistant overseers, of revoking the appointment of assistant overseers, and any powers, duties and liabilities of overseers; also any powers, duties and liabilities of a parish council.

The L. G. B. Order will not alter the incidence of any rate. (S. 33, L. G. Act, 1894.)

An urban council have in many respects wider powers than a rural council ; but a rural district council may be invested with urban powers by the L. G. B. under s. 276, P. H. Act, 1875 ; s. 5, P. H. Act, 1890 ; and s. 25, sub-s. 5, L. G. Act, 1894. The L. G. B. may exercise this power on the application of the district council, the County Council, or, if the matter relates to a parish, on the application of the parish council. (S. 25, sub-s. 7, L. G. Act, 1894.)

On complaint being made to the L. G. B. that a district council have neglected—

- (a) to provide their district with sufficient sewers or to maintain the existing sewers ; or
- (b) to provide their district with a supply of water, in cases where danger arises to the health of the inhabitants from the insufficiency or unwholesomeness of "the existing supply, and a proper supply *can be got at a reasonable cost* ; or that the council
- (c) have made default in enforcing any of the provisions of the P. H. Act, which it is their duty to enforce ;

the L. G. B., if satisfied, after enquiry held, that the complaint is well founded, can make an Order limiting a time in which the district council must perform that duty. This Order may be enforced by *mandamus* of the High Court (disobedience to which would be contempt of Court on the part of the members of the council), or the L. G. B., in case of a continuance of the council's neglect, can appoint some person to give effect to the Order, and may direct what remuneration and what sums for his expenses incurred shall be paid to him by the defaulting council. (S. 299, P. H. Act, 1875.)

The County Council have similar powers of compelling a rural district council to perform their duties on complaint being made by a parish council that the district council have made default in any of the matters referred to in s. 299 (*supra*), or that the district council have failed to maintain a highway in the parish in a good and substantial manner. (S. 16, sub-s. 2, L. G. Act, 1894.)

The County Council may, however, resolve that the powers and duties of the district council shall be transferred to them—

selves, instead of making an order on the district council under s. 299. (S. 16, sub-s. 1, L. G. Act, 1894.)

Similarly, if a district council have refused or failed to take proceedings on the representation of a parish council that a public right of way has been stopped or obstructed, or that an unlawful encroachment has been made on a roadside waste, the County Council may, on the petition of the parish council, take over the district council's powers in the matter. (S. 26, sub-s. 4, L. G. Act, 1894.)

When a County Council resolve to take over a district council's powers—

- (a) they must send a notice of the resolution to the district council and to the L. G. B.
- (b) The expenses incurred by the County Council are a debt
 - due from the district council, and the district council can raise the necessary money for defraying them.
- (c) The County Council may for the purpose of the powers transferred borrow money on behalf of the district council on the security of the funds or rates under the district council's control.
- (d) The County Council can charge that fund or rate with the payment of the principal and interest of the money borrowed, and the district council must pay it as though they had raised the money.
- (e) The County Council can afterwards vest in the district council the powers, &c. which were temporarily transferred.

Where a rural district is in different counties, a parish council may make the complaint referred to above to the council of the county in which the parish is situate. (S. 63, L. G. Act, 1894.)

Education.

EDUCATION ACT, 1902, AND THE DISTRICT COUNCIL.

The Education Act, 1902, constituted the County Council and the council of the county borough the local education authority; but the council of an urban district, with a population of 20,000, or of a borough, with a population of over 10,000, are the local education authority for the district or

borough. The powers and duties of an urban district council, which are the local education authority, are so numerous and complex as to be outside the scope of this book.

The County Council may make arrangements with a district council to manage a school in their district on such terms and subject to such conditions as may be agreed upon between them. (S. 20.)

The powers exercisable by the district council under the Education (Blind and Deaf Children) Act, 1893, and the Elementary Education (Defective and Epileptic Children) Act, 1899, have been transferred to the County Council by the 1902 Act. (Schedule II.)

Where a school appears to the County Council to serve a particular area, the County Council may give the local authority of that area (in the Act referred to as the "minor local authority") a share in the appointment of the managers of the school.

The "minor local authority" may be a borough council, urban district council, or parish council, or, where there is no parish council, the parish meeting. (S. 24.)

S. 6 of the Act provides that, in the case of a *provided* school, the County Council can appoint four of the managers and the "minor local authority" two. In the case of the *non-provided* schools, of the two managers (not including the foundation managers), one will be appointed by the County Council, and one by the minor local authority.

If the County Council, as they may do, group schools under one body of managers, they must make provision for the due representation of the "minor local authorities" on the body of managers. (S. 12.)

Any district council may expend, in the form of an education grant, money out of the rates for supplying or aiding the supply of education other than elementary education. (S. 3.)

N.B.—This section preserves to a district council the power of encouraging the kind of education they could assist in supplying under the Technical Instruction Acts, 1889 and 1891, which are repealed by the Education Act, 1902.

The amount which can be spent on this object in one year is limited to the product of a rate of 1*d.* in the pound. (S. 3.)

These grants cannot be made conditional on any particular form of religious instruction or worship being given or used in a school or other institution to which the grant is made. (S. 4.)

The grant may be used or made for the training of teachers, or for supplying or aiding the supply of any education *except where given at a public elementary school*. (S. 22, sub-s. 3.) An evening school carried on under the regulations of the Board of Education is not an elementary school. (S. 22, sub-s. 1.) The council can make this provision for higher education outside their area if they consider it expedient for the interests of their own area; and they may pay or assist the payment of fees of students ordinarily resident in the council's area at schools or colleges in or outside their area. The council may provide scholarships with this grant. (S. 23, sub-s. 2, Education Act, 1902.)

The form of financial statement which is to be prepared and submitted by an urban district council, not being a local education authority, aiding or supplying higher education, is contained in a L. G. B. circular, 24th December, 1905.

MUSEUMS AND GYMNASIUMS.

An urban district council which have adopted the Museums and Gymnasiums Act, 1891, can provide their district with a museum or gymnasium, or both. The Act can be adopted wholly, or so far as it relates to a museum, or so far as it relates to a gymnasium. (S. 3.) A museum or gymnasium can be provided with all the necessary apparatus, and the council can erect the necessary buildings. (S. 4.) Land may be purchased in the manner provided by ss. 175—177, P. H. Act, 1875, or the council, with the sanction of the L. G. B., may appropriate for the purpose of a museum or gymnasium any land vested in them or at their disposal. (S. 11.)

N.B.—The council can turn a swimming-bath provided by them into a gymnasium during certain months of the year. (See p. 24.)

A museum provided by the council under this Act must be open to the public, free of charge, not less than three days a week: though subject to this restriction, the council may make a charge for admission on other days and may let the

museum or any room in it to persons, gratuitously or for a fee, for a lecture, exhibition, or for purposes of education or instruction. The person to whom the place is let for such purposes cannot make a charge for admission without the council's consent. (S. 5.)

A gymnasium must be open to the public, free of charge, at least two hours a day during five days a week. But, with this exception, the council can make a charge for admission and may regulate its use by gymnastic classes.

For not more than two hours a day the exclusive use of it may be granted to any person for gymnastics for such payment and on such conditions as the council think fit.

Further, the council may, for not more than twenty-four days in a year and not for more than six consecutive days, close the gymnasium and grant the use of it, for a charge or free of charge, for any public purpose. The council can allow the person to whom it is let to charge for admission on such occasions. (S. 6.)

A museum or gymnasium can be closed for repairs; but the council must give a fortnight's notice of their intention to close it, by placard or notice affixed to the door of the building or by some other means. (S. 8.)

The council can make bye-laws (to be approved by L. G. B.) and regulations for (a) fixing the times when a museum or gymnasium is to be open free of charge; (b) giving special facilities to students for the use of the museum; (c) fixing the fees payable for the use of the museum in a special manner; (d) regulating the use of a gymnasium and fixing the charges; (e) settling the duties of the officers, instructors and servants of the council; (f) prescribing the conditions on which the exclusive use of the museum, or any room in it, or the gymnasium is to be granted; and generally. (S. 7.)

The council can employ and pay officers, servants and gymnastic instructors. (S. 9.)

A museum or gymnasium which is, after seven years, found to be unnecessary or too expensive, may, with the sanction of the L. G. B., be sold by the council. The proceeds of the sale must go to the repayment of any money borrowed for the establishing or maintenance of the building; or, if no such

debt is outstanding, to any other purpose to which capital moneys may be applied and of which the L. G. B. approves. (S. 12.)

The amount a council can expend in a year on a museum or a gymnasium provided under this Act is limited in respect to either to the sum produced by a rate of $\frac{1}{3}\%$ in the pound.

The fees and charges received for the use of the place are to be applied to defraying the expenses of maintenance, and any deficit is to be paid out of the general district rate.

Separate accounts of receipts and expenditure must be kept.

The council can borrow money for the purposes of this Act, subject to the restrictions on borrowing contained in the P. H. Act, 1875. (S. 12.)

PUBLIC LIBRARIES, &c.

On adopting the Public Library Act, 1892, an urban district council become the "library authority" of the district, and the district a "library district."

The council can thereupon provide and maintain all or any such institutions as a public library, museum, school for science, school for art, or an art gallery.

For this purpose they have the same powers of purchasing or appropriating lands as under the Museums and Gymnasiums Act, 1891 (*supra*). The council can also, with the sanction of the L. G. B., sell or exchange lands for others better adapted for the purposes of this Act, and let any buildings they have acquired for a library, &c. which are not at the time required. The money arising from such sale or letting must be applied to the execution of this Act. (S. 12.)

Land held for ecclesiastical, parochial, or charitable purposes may, to the extent of one acre, be sold or given to a council for the purpose of a library, &c. if the authorities governing the transfer of such land consent. (S. 13.)

N.B.—The Libraries Acts of 1893 and 1901 are to be construed with the P. L. Act, 1892.

The Board of Education may make a grant to an urban district council who have become a "library authority" towards the purchase of a site for, or the erection, enlargement, or repair of a school for science or art, or house for a teacher of

such school. This grant must be applied by the council as the Board directs. (S. 17.)

The general management and control of a library, &c. will be in the council. They can provide books, newspapers, maps, specimens of art and science.

They can appoint salaried officers and servants, and make regulations for the safety and use of the building.

Or the council can delegate their powers under this s. 15 to a committee, which need not necessarily be composed of members of the district council. (S. 15, P. L. Act, 1892.)

When the 1892 Act has been adopted for two or more neighbouring urban districts, the respective councils can combine and agree upon sharing the expenses of carrying the Act into execution. In such case they may appoint a Joint Committee and delegate to it any of the powers and duties of a "library authority," except the power to borrow money. People who are not district councillors can be appointed to this committee. (S. 4, P. L. Act, 1893.) An urban "library authority" can also combine with the "library authority" of a rural area to share the expense of providing and maintaining a library, &c. in one of the areas. (S. 5, P. L. Act, 1901.)

Bye-laws can be made (to be approved by L. G. B.) for regulating the use of a library, &c., and for the protection of its contents, for security against loss of, or injury to, books by the persons using them, and for the exclusion of offenders against the Library Offences Act, 1898. (S. 3, P. L. Act, 1901.)

This 1898 Act is applied to any library, &c. provided by the council (s. 4, P. L. Act, 1901), and anyone guilty of disorderly behaviour, obscene language, gambling, and refusing to leave a library, &c. after the hour fixed for closing can be prosecuted summarily.

No charge can be made for admission to a public library, &c. provided under this Act, except in the case of a lending library, when persons who are not inhabitants of the district may be charged for the use of books. (S. 11, P. L. Act, 1892.)

N.B.—Special provision has been made by s. 7 of the P. L. Act, 1901, with regard to a *museum*. If the Museums and Gymnasiums Act, 1891, and the P. L. Act, 1892, have been adopted in an urban district, a museum provided under the 1892

Act may be treated as a museum provided under the 1891 Act, and the provisions of the 1891 Act (*supra*) will apply to that museum. The advantage of this enactment lies in the fact that a council will then be able to make charges for admission to, and for the use of, the museum, which they cannot do under the P. L. Act, 1892, and so make the museum contribute in some way towards the expense of its maintenance.

The expenditure of a council, under the P. L. Acts, is limited each year to a rate of 1*d.* in the pound (s. 2, P. L. Act, 1892), though the council, when resolving to adopt the Act, can further resolve that this limit shall not exceed a rate of $\frac{1}{2}$ *d.* or $\frac{1}{4}$ *d.* in the pound. This resolution may be altered or abolished by a subsequent resolution, but in no case can the 1*d.* limit be exceeded. (S. 2, P. L. Act, 1893.)

The expenses can be defrayed out of the general district rate, or a separate library rate may be levied. (S. 18, P. L. Act, 1892.)

The council's accounts must be kept and audited, and the council have the same borrowing powers as under the P. H. Act, 1875. (Ss. 19 and 20, P. L. Act, 1892.)

The expenses of repairing damage to a library, &c. caused by subsidence are not to be reckoned for the purpose of the above-mentioned limit on the rate. (S. 10, P. L. Act, 1901.)

Election of Councillors.

The election of a district councillor is regulated by the rules contained in the L. G. B.'s Urban District Councils Election Order and Rural District Councils Election Order of 1898. In many respects the provisions of these two Orders are identical, and they are summarized below.

The clerk of the council is the Returning Officer for the purpose of an election. He may appoint in writing a deputy Returning Officer. If the clerk is unwilling or unable to act, the district council may appoint some other person to act as Returning Officer.

Notice of an election must be given by the Returning Officer not later than the second Friday in March, or, if the first

Monday in April is Easter Monday, not later than the first Friday in March.

N.B.—This rule applies to ordinary elections. See *infra* as to first elections (*e.g.*, when a new district is created or additional members are assigned to a district) and elections for filling up casual vacancies.

A candidate must be nominated in writing.

The Returning Officer must provide nomination papers free of charge to any parochial elector applying for them. In a rural district, the Returning Officer must also supply the overseers with nomination papers; and parochial electors can get these papers either from the Returning Officer or the overseers free of charge.

The nomination paper must state the candidate's surname and other names *in full*, his place of abode and description, and whether he is qualified as a parochial elector, or by having resided in the district during the whole of the twelve months preceding the election.

The nomination paper must be signed by two parochial electors of the district or ward, or (in a rural district) of the parish or other electoral area, as proposer and seconder.

The name of more than one candidate must not be inserted in the same nomination paper.

N.B.—A nomination paper may be filled in with the candidate's name after it has been signed by his proposer and seconder. (*Cox v. Davies*, (1898) 2 Q. B. 202; 67 L. J. Q. B. 925.)

A parochial elector (a) must not sign more nomination papers than there are councillors to be elected for the district, ward, or parish (as the case may be) for which the election is to be held; (b) must not sign a nomination paper for a district, ward, or parish unless he is registered therein as a parochial elector; (c) must not sign nomination papers for more than one ward or parish.

Should (a) and (c) be infringed, the first of the nomination papers received by the Returning Officer will alone be valid, provided that it is not invalid through not being properly filled up and signed.

Nomination papers must be sent to the Returning Officer,

and must be received by him not later than 12 o'clock noon on the Thursday following the day on which notice of election was given. A paper received after that time will not be a valid nomination paper.

The Returning Officer will decide on the validity or invalidity of the nomination paper. His decision is final. He must send notice of his decision to the candidate not later than the Friday following. A statement as to the persons nominated must be made out and published by the Returning Officer not later than the Saturday following.

A candidate may withdraw on giving notice in writing to the Returning Officer.

This notice of withdrawal must reach the Returning Officer not later than twelve o'clock noon on the Tuesday following the day on which the notice of an election was given.

The day of election will be the first Monday in April, or, if that is Easter Monday, the last Monday in March, unless the County Council for some special reasons fix another day.

If the number of candidates with valid nominations is equal to the number of vacancies to be filled there will be no poll, and the candidates will be declared elected.

If the number of candidates with valid nominations is less than the number of vacancies, these candidates will be declared to be elected, and those retiring councillors who were highest at the poll at their election will be declared to be deemed re-elected in order to fill up the deficiency.

If there are no valid nominations of candidates there will be no poll, and the retiring councillors will be declared to be re-elected.

A poll will be held if the number of valid nominations exceeds the number of councillors to be elected.

Public notice of the poll must be given by the Returning Officer five clear days at least before the day of election.

If there are only two candidates, each of them may appoint one polling agent for each polling station. If there are more than two candidates, any number of them, not being less than one-third of their number, can appoint one polling agent for each station.

A polling agent may be paid or unpaid. He must be

appointed in writing, and his appointment must be delivered at the office of the Returning Officer not later than two clear days before the poll.

Each candidate may appoint an agent to represent him at the counting of the votes. The name and address of such agent must be sent to the Returning Officer one clear day before the opening of the poll.

If there is an equality of votes the Returning Officer or deputy Returning Officer who counts the votes, if a parochial elector, can give a casting vote, but he must not otherwise vote at the election. If he is not a parochial elector, or is unwilling to vote, he must determine by lot which of the candidates who have tied shall be elected.

Should a casual vacancy arise an election must be held, and a person elected to hold office until the time when the councillor whose place he takes would, in the ordinary course, have gone out of office.

A casual vacancy is created by the non-acceptance of office by a councillor who has been elected or declared to be re-elected. It also occurs on the death or resignation of a councillor, or on a councillor becoming disqualified for remaining in office.

The election must be held within one month after notice in writing of the vacancy has been given to the chairman or the clerk by two councillors. But no election need be held if the vacancy occurs within six months before the ordinary day of retirement from the office in which the vacancy occurs; and the vacancy will then be filled up at the next ordinary election.

The Returning Officer is to fix the day of election on a day within one month after the above-mentioned notice of a vacancy has been given.

Notice of an election must be given not later than fourteen days before the day of election; but in the case of a first election, the day of election is to be fixed (subject to any special directions in the County Council's Order) on a day not later than six weeks from the date on which the Order comes into operation.

Nomination papers must be received by the Returning Officer not later than twelve o'clock noon on the fourth day after the day on which notice of the election is given.

The Returning Officer must decide on the validity of papers, and publish his statement of persons nominated on the last day for the receipt of nomination papers.

A candidate may give notice of withdrawal not later than twelve noon on the fourth day after the last day for the receipt of nomination papers.

If there is to be a poll, notice of the poll must be given five clear days before the day of election.

In the event of there being more than one casual vacancy to be filled up at the same election (not being an ordinary election), and there is a poll, the candidate elected by the smallest number of votes is to be deemed to be elected in the place of that councillor who in the ordinary course would have first gone out of office; and the candidate elected by the next smallest number of votes is to be deemed to be elected in the place of the councillor who would next have gone out of office, and so on.

For example:—Of A. and B., two members of a district council, A. dies and B. resigns office, thereby creating casual vacancies. A. when he died had two years, and B. when he resigned had one year, before his term of office was over. C. and D. are elected in their place. C. heads the poll, and will therefore be deemed to be elected in the place of A., who had the longest term of office to serve.

If there is no poll for filling up the casual vacancies, it will be for the council to decide the order of rotation in which the incoming councillors shall go out of office.

If there is an equality of votes, the council must determine by ballot who is to be deemed to fill the casual vacancy.

When there are one or more casual vacancies to be filled up at an ordinary election of councillors (a casual vacancy created six months before the natural expiration of the term of office will be filled up at the ordinary election), the successful candidates elected by the fewest votes are to be deemed to fill the casual vacancies.

For example:—If there are two vacancies in a district or ward, one of which is caused by the expiration of the three years' term of office, and the other is caused by the resignation of a councillor six months before his term of office was over—of the two candidates elected to fill the vacancies, the one elected

by the fewest number of votes will be deemed to be elected to fill the casual vacancy.

The L. G. B. by an Order of 20th November, 1894, has prescribed a scale of expenses payable by the district council in respect of elections.

In urban districts these expenses are to be defrayed out of the district rate or fund. If, however, the polls for the election of urban district councillors and of guardians are taken together, as they may be, then the district council are to pay half the expenses.

In rural districts the expenses, including the sums payable to the Returning Officer, incurred in relation to a *poll* are to be paid by the district council, but are to be charged to the parish and raised as "general" expenses are. If a poll for rural district councillors and parish councillors is taken together; the district council must pay half the expenses.

Any sums payable by the rural council in relation to an *election* (apart from the *poll*), are to be defrayed as follows:—
(a) if the election is an ordinary election, as "general" expenses; (b) if not an ordinary election, the sums payable are to be raised in the parish for which the election is held as "general" expenses, provided that when such sum is payable in respect of two or more parishes, it is to be apportioned between them according to the number of parochial electors registered in each.

Certain sections—34, 35, 36, 37, 239—of the Municipal Corporations Act, 1882, have been adapted so as to apply to the acceptance of office and resignation by district councillors. (S. 48, Local Government Act, 1894, and Fifth Schedule to Urban District Councils Elections Order, 1898.)

Every *qualified* person elected or deemed to be re-elected to a district council (unless exempt by s. 34, Municipal Corporations Act, 1882, or otherwise) must accept office by making and subscribing the required declaration within one month after receiving notice from the Returning Officer of election or re-election, or he must pay such fine (not exceeding 50*l.*) as the district council may by their regulations determine.

If there are no regulations determining this fine, it will be 20*l.*

It can be recovered by the council summarily. In a rural

district it must be paid to the credit of the parish for which the person fined was elected.

Persons exempted by s. 34, Municipal Corporations Act, 1882, are—a person disabled by lunacy or imbecility of mind, or by deafness, blindness, or other permanent infirmity of body, or any person who, having within five years before the day of election served the office for the particular district or other area, claims exemption within ten days after receiving notice of election or re-election.

N.B.—The Returning Officer is required by the Election Orders Rules to send to the person elected or re-elected a notice of the result of the poll or the election.

A person nominated and elected without his consent is not liable to a fine for non-acceptance of office.

Non-acceptance of office creates a casual vacancy.

If a person is elected in more than one ward (or in a rural district, in more than one parish), he cannot accept office for more than one of these electoral areas. And if he accepts office in one, or pays the fine for non-acceptance in respect of one, he is not liable for a fine in respect of any other.

A candidate who has been elected for more than one ward or parish can make his choice as to which he will represent on the council.

A person elected or re-elected must not act as district councillor until he has made and subscribed the declaration accepting office.

The declaration may be made and subscribed in the presence of two district councillors or of the clerk of the council; or, if the councillor is absent from the United Kingdom, he can make it before a British Consul, in which case it must be sent forthwith to the clerk of the council.

A person is liable to a fine of 20*l.*, which is recoverable by action, for each occasion he acts as a district councillor without having made the declaration.

A district councillor can resign at any time by giving notice in writing signed by him to the clerk, and on payment of the non-acceptance fine.

A rural district councillor is, with respect to resignation, in the same position as a guardian (s. 48, sub-s. 4, Local Govern-

ment Act, 1894), and his resignation must be tendered to and accepted by the L. G. B. (S. 11, Poor Law Amendment Act, 1842.)

The council must then declare the office vacant, and signify that fact by notice in writing signed by three members of the council and countersigned by the clerk. This notice must be affixed to the outside gate or door of the council's offices, and the office thereupon becomes vacant.

Part IV. of the Municipal Corporations Act, 1882, relating to corrupt practices and election petitions, has been adapted, by the Elections Orders, 1898, to district council elections.

An election may be questioned by an election petition on the ground that it was avoided by corrupt practices, or that the person who was elected was disqualified at the time of his election, or that the successful candidate was not elected by a majority of lawful votes.

A petition on the ground of corrupt practices may be presented at any time within six weeks after the day of election; a petition on the other grounds must be presented within twenty-one days after the election day.

The petition can be presented either by four or more parochial electors who voted, or had the right to vote, at the election, or by a person who was a candidate at the election.

The petition must be presented in accordance with the Supreme Court Rules, 1883; and at the time of presenting the petition, or within three days after, a petitioner must give security for costs, either by a deposit or by recognisance, to the amount of 50*l.*, unless the Court orders a lesser or a higher amount.

In the event of a difficulty arising with respect to the election of any individual councillor, and there is no provision for holding another election, the County Council can order a new election to be held. (S. 48, sub-s. 5, Local Government Act, 1894.)

N.B.—The Local Government (Elections) Act, 1896, which has been continued in force till 31st December, 1908, empowers the County Council, in case of a difficulty arising out of the election of a district councillor, or in case no election is held, or if a district council is not perfectly constituted, to appoint members or to direct an election to be held.

Expenses.

HOW ARE AN URBAN COUNCIL'S EXPENSES DEFRAYED?

The expenses of an urban district council, when not otherwise provided for (*e.g.* the water rate leviable under s. 56 and the highway rate under s. 216, P. H. Act, 1875, and the library rate under the Public Libraries Act, 1892), are defrayed out of the general district rate. But those rates—the General Improvement Rate, the General Sewer Rate for the maintenance of sewers, and the Special Sewer Rate for the construction of new sewers—being of the nature of a general district rate, which improvement commissioners as the predecessors of the urban council were authorized to levy, may be continued by the district council. (S. 207, P. H. Act, 1875.) A general district rate may be levied in addition to any of the above-mentioned rates. (S. 210, P. H. Act, 1875.)

N.B.—Expenses incurred under P. H. Act, 1907, are to be defrayed in the same manner. (S. 4, P. H. Act, 1907.)

The moneys received from the rate must be carried to the account of the “district fund,” and a separate account must be kept by the treasurer of all payments into and from this fund, called the “district fund account.” (S. 209, P. H. Act, 1875.)

The general district rate must be in writing and under the seal of the council. It can be made and levied either prospectively to meet future expenses, or retrospectively in order to raise money for the payment of expenses incurred within six months before the rate was made; and in calculating this period, the time during which any appeal or other proceeding relating to the rate is pending is to be excluded. (S. 210, P. H. Act, 1875.)

N.B.—“The principle is that these bodies are only entitled to charge upon future ratepayers present expenditure so far as they have statutory borrowing powers; the effect of their borrowing powers is to enable them to charge instalments of present expenditure upon future ratepayers, and borrowing powers are granted upon the understanding that the capital expenditure benefits future ratepayers. Subject, therefore, to their borrowing powers, corporations and bodies of this character

have no right to charge future ratepayers with present expenditure." (Channell, J., *Smith v. Southampton Corporation*, (1902) 2 K. B. 253; 71 L. J. K. B. 639.)

The council cannot enforce payment of a rate made retrospectively on account of expense incurred by the council beyond the six months limit. (*Saul v. Wigton R. S. A.* (1886), 56 L. T. 438.)

Where, however, a dispute between an urban and a rural council had arisen in 1895 and continued till 1897, when legal proceedings were taken and ended in favour of the urban council, the Court, under the circumstances, compelled the rural council to make a rate to satisfy the urban council's judgment, although the rate would be levied in respect of expenses more than six months old. (*R. v. Leigh R. D. C.*, (1898) 1 Q. B. 836; 67 L. J. Q. B. 562.)

Seven days before the day on which the rate is intended to be made, public notice must be given of the intention to make the rate, of the time when it is intended to be made, and of the place where a statement of the proposed rate can be inspected. (S. 210, P. H. Act, 1875.)

For the purpose of assessment the council can inspect and take copies of valuation lists or any book relating to the poor rate. (S. 212, P. H. Act, 1875.)

The rate is levied on the *occupier* of the property according to the poor law assessment.

(A.) But in certain cases, at the option of the council, an urban council may resolve that the *owner* and not the occupier shall be rated. These cases are—

- (a) when the rateable value of the premises liable to assessment does not exceed 10*l.*; or
- (b) when the premises are let to weekly or monthly tenants; or
- (c) when the premises are let in separate apartments, or where the rents are paid at any shorter period than quarterly.

There are, however, two provisos which must be observed when the council resolve to rate the owner in any of the above cases:—

- (i) The owner must be assessed on a reduced estimate, not less than two-thirds or more than four-fifths of the net

annual value of the premises, as the council deem reasonable.

N.B.—This proviso only applies where there is an occupier of the premises.

- (ii) If the council resolve, as they can do, that the owner shall be rated *whether the premises are occupied or not*, the owner must be assessed on one-half of the net annual value. (S. 211, sub-s. 1, P. II. Act, 1875, and *R. v. Barclay* (1882), 8 Q. B. D. 306, 486; 51 L. J. M. C. 47.)

N.B.—The object of the sub-section and its provisos is to assure to the council an otherwise doubtful payment of the rate, and to give to the owner (who has to pay the rate regularly in respect of premises from which he may be receiving rents irregularly), the benefit of being rated on a reduced assessment. (*R. v. Barclay* (*ubi supra*.)

(B.) With regard to the following kinds of property the persons rated must be assessed on one-fourth only of the net annual value of the property :—

- (a) The owner of tithes or of a tithe commutation rent-charge.
 (b) The occupier of land used as arable, meadow or pasture-ground only, or as woodlands (s. 211, sub-s. 1), or orchards (Rating of Orchards Act, 1890), or allotments (Allotments Exemption Act, 1891), or market gardens, or nursery grounds, or the occupier of any land covered with water, or used only as a canal- or towing-path, or as a railway constructed under an Act of Parliament for public conveyance. (S. 211, sub-s. 1.)

N.B.—The Agricultural Rates Act, 1896, contains a definition of agricultural land which includes *inter alia* “land used as arable, meadow and pasture ground.” In a case under this Act it was held that buildings used for agricultural purposes were not “agricultural land.” (*Smith v. Richmond*, (1899) A. C. 448; 68 L. J. Q. B. 898.)

The reduced assessment provided for in the Agricultural Rates Act does not apply to the general district rate.

A shooting tenant does not occupy “land used as arable, pasture or woodlands.” (*Alton U. D. C. v. Spicer*, (1904) 1 K. B. 678; 73 L. J. K. B. 280.) Sporting rights are rateable under

the Rating Act, 1874. When sporting rights are let separate from the occupation of the land, either the owner or lessee of the sporting rights may be rated in respect of them.

A market garden, though it is entirely covered with glass-houses, is within the exception. (*Purser v. Worthing L. B.* (1887), 18 Q. B. D. 818; 56 L. J. M. 78.)

"Land covered with water" includes an artificial reservoir used by a water company for storing water. (*Hampton U. D. C. v. Southwark and Vauxhall Water Co.* (1889), 16 T. L. R. 60.)

"Railway" includes a light railway constructed under the Light Railways Act, 1896. (*Wakefield Light Railway v. Wakefield Corporation* (1907), 76 L. J. K. B. 634.)

A tram road is a "railway" for the purposes of a reduced assessment. (*Blackpool and Fleetwood Tramroad Co. v. Thornton U. D. C.*, (1907) 1 K. B. 568; 76 L. J. K. B. 492.)

"Land used as a railway" means those things without which the railway could not be carried on as a highway; e.g., platforms, but not such things as a covered cab drive to the station, or cattle pens. (*L. and N. W. Rail. Co. v. Llundudno Commissioners*, (1897) 1 Q. B. 287; 66 L. J. Q. B. 232.)

(C.) Property in an urban district exempted by a local Act from being rated for any of the purposes for which a general district rate can be made under the P. H. Act, 1875, is to continue to be exempted unless the L. G. B., by provisional order otherwise directs. (S. 211, sub-s. 1.)

But any limit of amount imposed on a rate by a local Act does not apply to a rate levied under the P. H. Act, 1875. (S. 227, P. H. Act, 1875.)

A rate is not to be charged on any person in respect of premises while they are unoccupied. (S. 211, sub-s. 2, P. H. Act, 1875.)

N.B.—This sub-section does not apply when the council have resolved in pursuance of sub-s. 1, *supra*, to rate the owner, whether the premises are occupied or unoccupied. (*R. v. Barclay* (1882), 8 Q. B. D. 486; 51 L. J. M. C. 47.)

If premises are occupied for any portion of the period for which the rate was made, and before it has been fully paid, the name of the incoming tenant must be inserted in the rate, and he must pay such portion of the rate as is in proportion to the

time he has occupied the premises. (S. 211, sub-s. 2, P. H. Act, 1875.)

Similarly, an owner or occupier ceasing to be owner or occupier before the end of the period for which the rate was made, and before it is fully paid off, is only liable to pay in proportion to the time he was the owner or occupier. The new owner or occupier also, as the case may be, is likewise only liable in respect of the time he is in possession of the premises during the unexpired period for which the rate was made. (S. 211, sub-s. 3, P. H. Act, 1875.)

An urban district council may (it is quite optional on the part of the council (*Dorling v. Epsom L. B.* (1855), 24 L. J. M. C. 152)), divide their district, or any street in it, into parts for any of the purposes of the P. H. Act. These divisions may be abolished or altered. A separate assessment may be made on each division, and then the division is to be exempt from any other assessment. But any expenses incurred in respect of the divisions in common must be apportioned between them in a fair and equitable manner. (S. 211, sub-s. 4, P. H. Act, 1875.)

The object of this provision is to enable an urban council to relieve the agricultural portions of their district from the expense of certain works, *e.g.*, paving and lighting, from which they do not receive the same benefit as the urban portions. (Per Field, J., *Oxenhope L. B. v. Bradford Corporation* (1882), 47 L. T. 344.)

Before making a rate the council must cause an estimate to be prepared of the amount of money required, showing the sums of the several purposes for which the rate is made, the rateable value of the assessable property, and the amount of rate in the pound necessary. This estimate, if approved by the council, is to be entered in the rate book, where it is to be open to inspection (s. 218), and persons interested may take copies of it (s. 219). This estimate is not to be deemed to be part of the rate or to affect its validity. (S. 218, P. H. Act, 1875.)

The council can amend the rate by inserting or striking out the name of the person claiming to be, or who ought not to have been assessed, or by lowering or increasing the amount if they consider that the person has been over or under assessed.

A person aggrieved by an amendment can appeal to Quarter Sessions.

An amended rate which increases the rate, or newly inserts the name of a person by whom it is to be paid, does not become payable until seven days after the ratepayer has received notice of the amendment. (S. 221, P. H. Act, 1875.)

When the name of an owner or occupier is not known, he can be designated in the rate as "owner" or "occupier." (S. 220, P. H. Act, 1875.)

All rates (except private improvement rates) made under the P. H. Act must be published by affixing them to the church and chapel doors in the district. (S. 222, P. H. Act, 1875.)

The council, if they consider that premises were sufficiently drained before the construction of a new sewer by the council, may make a deduction from the amount of rate chargeable on the premises of such sum, and for such time, as they think just. (S. 224, P. H. Act, 1875.)

Further, the council may reduce or remit the payment of a rate on account of the poverty of the person liable to pay it. (S. 225, P. H. Act, 1875.) If a ratepayer pays more than he is liable to pay, it seems the council must refund the excess. (See judgment of Wills, J., in *Keeton v. Sheffield Coal Co.*, *infra*.)

A rate which the person assessed has not paid when it is due, and after demand for payment has been made, can be recovered by the council by summary proceedings (s. 256, P. H. Act, 1875), unless he can show a sufficient cause for non-payment.

In *Sheffield Waterworks Co. v. Mayor of Sheffield* (1885), 55 L. J. M. C. 40, the company, after the district rate had been made, successfully appealed to the Assessment Committee for a reduction. The company tendered to the corporation the rate due on the reduced assessment. The corporation took out a summons for the original rate. It was held that there was a sufficient cause for non-payment by the company of the whole rate.

Proceedings for the recovery of a rate must be taken within six months from the date when the cause of complaint, *i.e.*, non-payment after lawful demand, has arisen. (S. 11, Summary Jurisdiction Act, 1848.)

In *Keeton v. Sheffield Coal Co.*, (1901) 2 K. B. 26; 70 L. J. K. B. 374, payment of a rate was demanded from the company. Subsequently the assessment had been reduced on an appeal. Payment of the reduced rate was then demanded, and a summons was taken out to enforce payment. It was held that the six months began to run from the date when the demand for the amended rate was not complied with, and not from the demand of the original rate.

The rate book is *prima facie* evidence of the making and validity of the rates. (S. 223, P. H. Act, 1875.)

The P. H. Act, 1875, and other Acts, in many instances, provide for expenses incurred by the council being declared "private improvement expenses" and being defrayed out of a "private improvement rate."

This private improvement rate is in addition to any other rate that may be levied by the council on the same person.

It must be sufficient, with interest not exceeding 5 per cent. per annum, to discharge the private improvement expenses in the period (which must not exceed thirty years) determined upon by the council.

The owner for the time being of the premises must pay the rate for any part of this period during which the premises are unoccupied. (S. 213, P. H. Act, 1875.)

The owner or occupier of premises which are assessed to a private improvement rate may redeem it by paying to the council the expenses for which the rate was made. (S. 215, P. H. Act, 1875.)

N.B.—The owner is brought in because s. 214 empowers a tenant to make a deduction from rent in respect of private improvement rates paid by him.

This money must be applied by the council in defraying expenses incurred by them in any works of private improvement, or in discharging loans borrowed by the council to meet those expenses, by means of a sinking fund or otherwise for paying off the principal. (S. 215, P. H. Act, 1875.)

A private improvement rate need not be published. (S. 222, P. H. Act, 1875.)

N.B.—These provisions relating to private improvement rates

apply equally to rural district councils. (S. 232, P. H. Act, 1875.)

In an urban district (when there is no local Act, *e.g.*, an improvement Act providing for the repair of highways), the cost of repair of highways is to be defrayed as follows:—

- (i.) When the whole district is rated for works of paving the cost is to be defrayed out of the general district rate.
- (ii.) When parts of the district are not rated for such works, the cost of repairing highways in those parts is to be defrayed out of a highway rate to be separately assessed on those parts. The cost of repairs in the rest of the district is to be paid from the general district rate.
- (iii.) When no works of paving are established in the district, the cost of repairs of highways is to be defrayed out of a general highway rate. (S. 216, P. H. Act, 1875.)

A single act of edging a path with curb-stones was held not to be an establishing of public works of paving. (*Ozenhope L. B. v. Bradford* (1882), 47 L. T. 344.)

HOW ARE A RURAL COUNCIL'S EXPENSES DEFRAYED?

A rural district council can, by a resolution to be approved by the L. G. B., constitute any portion of their area a special drainage district for the purpose of charging it exclusively with the expenses of works of sewerage, water-supply, or other works which may be declared to be "special" expenses. Such an area then becomes a separate "contributory place." (S. 277, P. H. Act, 1875.)

The expenses of a rural district council are divided into (a) "general" expenses, and (b) "special" expenses.

- (a) "General" expenses are payable out of a common fund to be raised out of the poor rate of the parishes in the district, according to the rateable value of each contributory place. They include:—

- (i.) the expenses of the establishment and offices of the council;

(ii.) the expenses of disinfection and of providing conveyance for infected persons ;

(iii.) all other expenses not determined by Act of Parliament or by L. G. B. Order to be "special" expenses. (S. 229, P. H. Act, 1875.)

The expenses incurred in carrying out the provisions of the Infectious Disease Prevention Act, 1890, are to be defrayed as "general" expenses. (S. 20, Infectious Disease Prevention Act, 1890.)

Expenses under the P. H. Act, 1907, are to be defrayed as "general" expenses, unless the L. G. B. directs the contrary. (S. 4, P. H. Act, 1907.)

(b) "Special" expenses are a separate charge on each contributory place. They include:—

(i.) the expenses of the construction, maintenance and cleansing of sewers in any contributory place ;

(ii.) the expenses of providing a water-supply and of the maintenance of the necessary works so far as the expenses are not defrayed out of water-rates or rents ;

(iii.) the charges and expenses arising out of the possession of property transferred to a rural council in trust for a contributory place ;

(iv.) all expenses payable by the council in respect of a contributory place which the L. G. B. orders to be defrayed as "special" expenses. (S. 229, P. H. Act, 1875.)

N.B.—The expenses of a rural council incurred in putting into operation Part III. of the Housing of the Working Classes Act, 1890 (see "Housing"), will be defrayed as "special" expenses unless the County Council direct them to be paid as "general" expenses.

The L. G. B. can, on the application of a rural council which have adopted those provisions of Part III., P. H. Act, 1890, which are applicable to rural districts, order the expenses incurred under Part III. to be defrayed as "special" expenses. (S. 49, P. H. Act, 1890.) The L. G. B., further, can direct that any expenses under the Local Government Act, 1894, which the Board has determined to be "special" expenses, shall

be raised as "general" expenses are raised, and not by a separate rate as provided for in s. 230, P. H. Act, 1875, *infra*. (S. 29 [b], Local Government Act, 1894.)

Expenses incurred by a rural council under s. 14, Factory and Workshop Act, 1901, are to be defrayed as "special" expenses. The expenses incurred under the Open Spaces Act, 1906, will be defrayed as "special" expenses.

When any works are done for the common benefit of two or more contributory places, the council can apportion the expenses to be paid by each place in such manner as the council think just. The overseers of a contributory place can, within twenty-one days after notice of the apportionment, complain to the L. G. B. against it. (S. 229, P. H. Act, 1875.)

The provisions (*supra*) applying in the case of urban councils to the payment of "private improvement expenses" apply equally in the case of rural district councils. (S. 232, P. H. Act, 1875.)

Highway expenses are "general" expenses (s. 29, Local Government Act, 1894); but a rural council can charge the expense of maintenance of the highways in a contributory place on that place should exceptional circumstances so require (s. 7, Highways and Locomotives Act, 1878), and drift-ways and occupation-ways may be made repairable at the expense of a particular parish. (S. 36, Highway Act, 1862.)

When highway expenses would, but for the Local Government Act, 1894, have been defrayed in a parish or other area out of any property or funds (*e.g.*, a charity for the upkeep of roads) other than rates, the council must give the benefit of that property or fund to the parish by way of reduction of the rates on the parish. (S. 29 [d], Local Government Act, 1894.)

For the purpose of obtaining payment from the several contributory places, the council must issue their precept to the overseers, requiring them to pay to the council the amount specified in the precept.

The amounts required respectively for "general" and "special" expenses must be distinguished in the precepts, or the council can issue a separate precept for each.

The overseers must pay the amount required for "general" expenses out of the poor rate of their respective parishes.

They must raise the amount required for "special" expenses by levying a separate rate in the same manner as though it was a poor rate, with this exception, that—(i.) the owner of tithes or of a tithe commutation rent-charge; (ii.) the occupier of land used as arable, meadow, pasture, woodlands, orchards and allotments, market gardens and nursery grounds; (iii.) the occupier of land covered with water, or used as a canal, or towing-path, or as a railway, must be assessed and must pay on one-fourth only of the rateable value. (S. 230, P. H. Act, 1875.) This reduced assessment only applies to the raising of a rate for defraying "special" expenses, and not "general" expenses. Where a rural council had been invested with urban lighting powers under the first paragraph of s. 161, P. H. Act, 1875, it was held that, inasmuch as the L. G. B. had not directed the expenses of lighting to be "special" expenses, a railway company were rightly assessed for "general" expenses, and were not entitled to the reduced assessment on "land used as a railway." (*Lancashire and Yorkshire Rail. Co. v. Bolton* (1890), 15 A. C. 323; 60 L. J. Q. B. 118.)

A retrospective rate for expenses payable in a past rating year is bad. (*Croydon Corporation v. Croydon R. D. C.*, (1908) 1 Ch. 222; 77 L. J. Ch. 138.)

Under the Agricultural Rates Act,* 1896, the occupier of agricultural land, as defined by the Act, is only liable to be assessed on one-half of the rateable value of the land. The provision of this Act does not apply to a rate to which the occupier of agricultural land is liable to be assessed on one-half, or less than one-half of the rateable value of his land. Therefore this Act does not apply in the case of a general district rate under s. 211, P. H. Act, 1875, or of a rate for "special" expenses levied on the occupier of land used as arable, meadow, pasture, &c. (see s. 230, P. H. Act, 1875); but it does apply to a rate levied for "general" expenses.

The Agricultural Rates Act has been continued in force till 1910 by the Agricultural Rates Continuance Act, 1901.

The overseers are responsible for the making and levying of a rate in a rural district to satisfy the precepts of the district council. At the end of their term of office, the overseers must pay to the council any surplus arising from a separate rate

levied on a contributory place, and such surplus must be applied in reduction of the next call made by the council on that contributory place. (S. 230, P. H. Act, 1875.)

If the overseers fail to pay the amount of rate required and within the time directed by the precept, the council's remedy is a distress warrant against the overseers. (S. 231, P. H. Act, 1875.)

Factories.

A "factory" is a place where any of the manufactures specified in s. 149, Factory and Workshop Act, 1901, as textile manufactures, and in Part I. of Schedule VI. of the Act as non-textile manufactures, are carried on.

(These lists are too long to be set out here.)

The following places of manufacture specified in Part II. of Schedule VI. of the Act:—Hat works, rope works, bakehouses, lace warehouses, shipbuilding yards, quarries, pit banks, dry-cleaning works, carpet-beating works, bottle-washing works (Factories and Workshop Act, 1901), and laundries carried on by way of trade, or for the purpose of gain, or carried on as ancillary to another business, or incidentally to the purposes of any public institution (s. 1, Factory and Workshop Act, 1907), are "factories" if steam power, water power, or mechanical power is used in the process of manufacture, and "workshops" if no such power is used.

"Workshop" means any premises, room or place, not being a "factory," where any manual labour is exercised by way of trade or for purposes of gain, in or incidental to—

- (i.) The making of any article or part of any article; or
- (ii.) The altering, repairing, ornamenting, and finishing of any article; or
- (iii.) The adapting of any article for sale;

and to or over which premises, room or place the employer of the persons working therein has the right of access or control.

"Workshop" also includes a "tenement workshop," *i.e.*, a place where two or more persons carry on work which would constitute the place a "workshop" if they were in the employment of the owner or occupier of the place. (S. 149, Factory and Workshop Act, 1901.)

The district council must keep a register of all workshops in the district. (S. 131, Factory and Workshop Act, 1901.)

A "domestic" factory or workshop means a private house, or room, or place which, though used as a dwelling, is, by reason of the work carried on there, a "factory" or "workshop," and in which neither steam, water, nor mechanical power is used, and in which the only persons employed are members of the same family dwelling there. (S. 115, Factory and Workshop Act, 1901.)

Buildings used as factories or workshops, or where persons are employed in any trade or business, must be provided with sufficient and suitable sanitary conveniences, with separate accommodation for the sexes. If it appears to the council on the report of their surveyor that these conditions have not been fulfilled, the council can require the owner or occupier of the premises, by notice in writing, to make such alterations and additions as may be necessary. There is a penalty for failure to comply with such notice. (S. 22, P. H. Act, 1890.)

Section 9, Factory and Workshop Act, 1901, requires that every factory and workshop shall be provided with proper sanitary conveniences in accordance with the Home Office requirements. This s. 9 does not apply in districts where s. 22, P. H. Act, 1890, is in force; and s. 22* is only in force in those urban districts where it, or Part III., P. H. Act, 1890, has been adopted by the district council. The result is, that s. 22 of the 1890 Act applies to factories in districts where the section is in force, and that s. 9 of the 1901 Act applies to factories in other districts.

A "factory" which is a nuisance can only be dealt with by the factory inspector in the manner provided by the Factory and Workshop Act, 1901; but a workshop, work-place, or "domestic factory" which is not kept in a cleanly state, or not properly ventilated, or which is overcrowded, can be dealt with by the district council as a nuisance under s. 91, P. H. Act, 1875. (S. 2, Factory and Workshop Act, 1901.)

N.B.—There is no definition of "work-place" in the Act; but stables and a cab yard, about which a number of men were employed, were held to be a "work-place." (*Bennett v. Harding*, (1900) 2 Q. B. 397; 69 L. J. Q. B. 701.) In this case,

Channell, J., said, "I think a work-place must be a place where some work is perpetually or permanently done."

Workshops and work-places must be kept free from effluvia arising from any drain, w.c., E.C., privy, urinal, or other nuisance. If not so kept it can be dealt with by the council as a nuisance.

The council also, on the certificate of the Medical Officer of Health, or of the inspector of nuisances, that the lime-washing, cleansing, or purifying of a workshop, or any part of it, is necessary for the health of the persons employed there, can by notice in writing require the owner or occupier of the premises to do the necessary work. On his making default after the time specified in the notice, he is liable to a daily fine of 10s., and the council can do the work and recover their expenses from him summarily. (S. 2, Factory and Workshop Act, 1901.)

If the council fail to perform their duties under this Act or under the P. H. Acts with regard to any factory or workshop, the Home Secretary may by order authorize the factory inspector to take the steps necessary to enforce those provisions. The inspector will then be in the position of the council for remedying any defaults, and he can recover from the council all expenses incurred by him in taking proceedings which he has not recovered from the person proceeded against. (S. 4.)

A factory inspector must give notice in writing to the council of any sanitary defects he finds in a factory or workshop which are remediable under the P. H. Acts and not under this Act. It is the duty of the council to make an inquiry into the subject of the notice, and to take such action as seems proper to them for enforcing the law. They must inform the inspector of these proceedings.

If for a month after receipt of this notice the council fail to take any steps to remedy the defect, the inspector can take the proceedings the council might have taken, and can recover from the council his expenses thereby incurred which he has not recovered from any other person, *and which have not been incurred in unsuccessful proceedings.*

For the purposes of this section the inspector may take with him into a factory or workshop the Medical Officer of Health,

or other officer of the district council. (S. 5, Factory and Workshop Act, 1901.)

For the purpose of their duties under this Act, and under the law relating to public health, the district council and their officers have the similar powers of entry, inspection, and of taking legal proceedings as a factory inspector has under the Act, *e.g.*, they can enter any premises which they have reason to believe are a workshop or factory. (S. 125, Factory and Workshop Act, 1901.)

The powers conferred on a district council by this Act are, in the case of factories and workshops belonging to or in the occupation of the Crown, to be exercised not by the council, but by the factory inspector. (S. 149, Factory and Workshop Act, 1901.)

Every factory and workshop *constructed since January 1st, 1892*, and in which more than forty persons are employed, must be furnished with a certificate from the district council that it is provided with a reasonably sufficient means of escape in case of fire.

The council must examine such factory or workshop, and on being satisfied, must grant the certificate, which must specify in detail the means of escape provided.

With regard to factories and workshops in which more than forty persons are employed, and which were *constructed before January 1st, 1892*, the council must from time to time ascertain whether they have such means of escape in case of fire as are reasonably necessary. If a place is not so provided, the council must serve on the *owner* a notice in writing specifying what measures are necessary for providing such means of escape, and requiring him to carry them out within the time named in the notice. If the notice is not complied with, the owner is liable to a fine of 20s. a day; but in case of a difference of opinion between the owner and the council, the matter can be referred to arbitration (in the manner provided by Schedule I. of the Act) on the application of either party within one month after the time when the difference arose.

The council's expenses under this section are to be defrayed in urban districts as expenses incurred in the general execution of the P. H. Act, 1875, and in rural districts as "special"

expenses, to be charged to the contributory place where the particular factory or workshop is situated. (S. 14, Factory and Workshop Act, 1901.)

A district council can make bye-laws (to be approved by L. G. B.) providing for means of escape from fire in the case of any factory or workshop. (S. 15, Factory and Workshop Act, 1901.)

Lists of out-workers employed in the classes of trade specified in the Home Office Order, 15th August, 1905 (see *infra*), must be kept in the form prescribed in the Order by the occupier of a factory or workshop and also by any contractor employed by the occupier in his trade or business.

Copies of these lists must be sent to the district council by the occupier and contractor twice a year—on or before the 1st of February and 1st of August.

The council must cause these lists to be examined, and must furnish the name and place of work of every out-worker in the list whose place of employment is in some other district to the council of that district.

The lists which the occupier and contractor must keep can be inspected by any officer duly authorized to do so by the council.

This section applies to any place from which any work is given out, as if that place were a workshop, e.g., a tailor's establishment where no actual tailoring work is done, all such work being given out to be done off the premises.

There is a penalty for the contravention of this enactment. (S. 107, Factory and Workshop Act, 1901.)

The council can prohibit work being given out to be done in an insanitary place. If the council give written notice to the occupier of a factory, workshop, or any place where work is given out (or to a contractor employed by the occupier), that the place where the out-work is carried on is injurious or dangerous to the health of the persons employed therein, he will be liable to a 10*l.* fine if he gives out work to be done in that place after a month from this notice, and if the Court finds the place to be so injurious or dangerous to health. (S. 108, Factory and Workshop Act, 1901.)

If the inmate of a house is suffering from an infectious disease, the council may make an order forbidding any work

to which the Home Office Order (*infra*) refers, to be given out to any person living or working in that house, or such part of it as may be specified in the council's order. The order may be served on the occupier of the factory, workshop, or any other place where the work is given out, or on the contractor employed by the occupier. The order may be made notwithstanding that the patient has been removed from the house, and it must be made either for a specified time or subject to the condition that the house or part of it liable to be infected shall be disinfected to the satisfaction of the Medical Officer of Health, or that other reasonable precautions shall be adopted.

In a case of emergency, two or more members of the council can make this order, acting on the advice of the medical officer.

There is a 10*l.* fine for contravening this order. (S. 110, Factory and Workshop Act, 1901.)

N.B.—The infectious diseases referred to are those required to be notified under the law for the time being in force in relation to Notification of Infectious Disease. (See p. 223.)

N.B.—Classes of work to which ss. 107 and 108 (*supra*) apply are—(1) making, cleaning, washing, altering, ornamenting, finishing and repairing of wearing apparel, and the work incidental thereto; (2) making, ornamenting, mending, and finishing of lace and lace curtains and nets; (3) cabinet and furniture making and upholstery work; (4) making electro-plate; (5) making files; (6) fur-pulling; (7) making of cart gear, including swivels, rings, and attachments of all kinds, and the making of iron or steel cables, chains, anchors and grapnels, and the making of locks, latches and keys; (8) making paper bags and boxes; (9) brush making; (10) making stuffed toys.

S. 110 applies to all the above with the exception of (7), and with the exception of cabinet and furniture making: it further applies to the making of covers for, and also the covering, finishing, altering and repairing of umbrellas, parasols and articles of a similar character. (Home Office Work Order, 15th August, 1905.)

The district council are the authority for enforcing the provisions of ss. 97—100 (*infra*) of the Factory and Workshop Act, 1901, with regard to the *retail* bakehouses in the district;

and for this purpose the medical officer has the same powers of entry, &c. as a factory inspector.

“Retail bakehouse,” means a bakehouse or place *not being a “factory,”* the bread, biscuits or confectionery baked in which are sold not wholesale, but by retail in some shop or place occupied with the bakehouse. (S. 102, Factory and Workshop Act, 1901.)

N.B.—A bakehouse will be a “factory” if steam-, water-, or other mechanical power is used in the process of baking.

It is unlawful to let, to occupy, or to suffer to be occupied any room or place as a bakehouse unless the following regulations are complied with:—

- (a) No water-closet, earth-closet, privy or ash-pit, must be within, or communicate directly with, the bakehouse.
- (b) Every cistern for supplying water to the bakehouse must be separate and distinct from any cistern supplying water to a water-closet.
- (c) A drain or pipe for carrying off fæcal or sewage matter must not have an opening within the bakehouse.

There is a penalty for a breach of any of these regulations, and a daily penalty for so long as the offence continues after a conviction. (S. 97, Factory and Workshop Act, 1901.)

A Court of summary jurisdiction, if satisfied in a prosecution undertaken by the council that a room or place used as a bakehouse is in such a state as, on sanitary grounds, to be unfit for use or occupation as a bakehouse, can order the means to be adopted by the occupier for removing the ground of complaint. (S. 98, Factory and Workshop Act, 1901.) This is in addition to a penalty.

All inside walls of a bakehouse, and all the ceiling and tops of the rooms, and all the passages and staircases of a bakehouse must either be painted with oil, or varnished, or be lime-washed, or they can be partly painted, or varnished, and partly lime-washed. When painted or varnished, there must be three coats, and it must be renewed once at least in seven years, and must be washed with hot water and soap once every six months. When lime-washed, it must be lime-washed once at least every six months.

If this provision is contravened, the occupier of the bakehouse can be dealt with under s. 135 of the Act, which imposes a 20%.

fine, and empowers a Court to order him to execute the works required. (S. 99, Factory and Workshop Act, 1901.)

A person must not occupy, or let, or allow to be occupied as a sleeping place, a place on the same level with a bakehouse and forming part of the same building, unless the sleeping place is (a) effectually separated from the bakehouse by a partition extending from floor to ceiling, and (b) has an external glazed window of at least 9 superficial feet in area, of which half is made to open for ventilation. (S. 100, Factory and Workshop Act, 1901.)

No underground place can be used as a bakehouse unless it was so used at the passing of this Act; and no such bakehouse can any longer (since January 1st, 1904) be used unless certified by the district council to be suitable for the purpose. It must not be certified unless the council are satisfied with its construction, lighting and ventilation. In the event of the council refusing to give a certificate, the occupier of the place may, within twenty-one days from the refusal, apply to a Court of summary jurisdiction, and the Court has a discretion in giving or refusing to give a certificate.

There is a penalty for contravention of this section. (S. 101, Factory and Workshop Act, 1901.)

An "underground bakehouse" means a bakehouse any room of which used for baking is so situate that the surface of the floor is more than 3 feet below the surface of the footway of the adjoining street, or of the ground adjoining the room. (S. 101, sub-s. 3, Factory and Workshop Act, 1901.)

The council of an urban district with a population of over 20,000 can, with the consent of the Home Office, make an order fixing the closing hours for shops in the district. The hour fixed must not be earlier than 7 p.m. on any day of the week, except that on one specified day in the week the hour for closing may be fixed at not earlier than 1 p.m. But no closing order can be made affecting a fair lawfully held in the district, or a bazaar for charitable purposes, or a post office, or chemist's, tobacconist's, or newspaper shops, licensed premises, places where refreshments are provided for consumption on the premises, or railway bookstalls or refreshment rooms. (Shop Hours Act, 1904.)

Fire Brigade.

An urban district council may provide fire engines and escapes, may build or hire places for keeping engines and fire appliances, may purchase or hire horses, may employ firemen and make rules for their observance, and pay them salaries and such rewards for their exertions in cases of fire as the council think fit. (S. 171, P. H. Act, 1875, incorporating s. 32, Towns Police Clauses Act, 1847.)

The word "provide" in the section includes the power to hire additional assistance in case of fire; and where the superintendent of a district council's fire brigade called in the assistance of another fire brigade, it was held that he had authority to do so, and that the council must pay for the assistance. (*James v. Staines U. D. C.* (1900), 17 T. L. R. 2.)

N.B.—A rural district council will have power to provide fire engines, &c. only if invested by the L. G. B. with the powers given to urban councils by s. 171, *supra*. Otherwise, in rural areas, the parish meeting have the exclusive right of adopting the Lighting and Watching Act, 1833 (s. 7, Local Government Act, 1894), and of providing fire engines and the necessary apparatus to deal with fires in pursuance of that enactment.

The owner of the premises where a fire has occurred must pay to the council the expense incurred in sending the fire engine, and also a reasonable sum for its use and for the attendance of the firemen. Any dispute between the council and the owner as to the charge, or as to the propriety of sending the fire engine, is to be determined by two justices, whose decision is final. (S. 171, P. H. Act, 1875, incorporating s. 33, Towns Police Clauses Act, 1847.)

"Owner" means the landlord and not the tenant of the premises. (*Sale v. Phillips* (1894), 10 T. L. R. 222.)

An urban council must provide fire plugs and the works necessary for securing an efficient supply of water in case of fire. The council can make an agreement with a water company for the purpose of supplying water. The situation of the fire plugs must be marked on any wall near by. (S. 66, P. H. Act, 1875.)

Part VIII. of the P. H. Act, 1907, contains further provisions with regard to fire brigades of local authorities. This Part of the Act is only in force in those districts to which it has been applied by order of a Secretary of State.

Any member of the local authority's fire brigade being on duty, and any officer of the local authority, may enter and break into premises on fire, or reasonably supposed to be on fire, without the consent of the owner or occupier, and may do anything he deems necessary for extinguishing the fire, or for rescuing any person or property. (S. 87, P. H. Act, 1907.)

The captain or superintendent of the local authority's fire brigade, or other officer of the brigade in charge of the engine or other apparatus attending at any fire in the district, has the sole charge and control of all operations for putting out the fire, whether by the local authority's fire brigade or any other fire brigade. (S. 89, P. H. Act, 1907.)

Local authorities may make agreements with each other for the common use of fire engines, with their appurtenances and firemen, or for mutual assistance in case of fire. (S. 90, P. H. Act, 1907.)

Highways and Streets.

DEFINITIONS.

A "highway" includes all roads, bridges, carriage-ways, cart-ways, horse-ways, bridle-ways, foot-ways, cause-ways, church-ways and pavements. (S. 5, Highway Act, 1835.)

A road does not cease to be a highway because it becomes a *cul de sac*. (*R. v. Burney* (1875), 31 L. T. 828.)

A "street" includes any highway, bridge (not being a county bridge), road, lane, foot-way, square, court, alley, or passage, whether a thoroughfare or not. (S. 4, P. H. Act, 1875.)

"The interpretation clause includes under the word 'street' things which no one in ordinary language would call streets, as, for instance, a highway which has not a house on either side of it." (Lord Esher in *Robinson v. Barton L. B.* (1883), 21 Ch. D. 634; 53 L. J. Ch. 5.)

HIGHWAYS—BY WHOM REPAIRABLE.

Highways, with regard to the liability attaching to keep them in repair, may be divided into—

- (I.) highways repairable by the inhabitants at large, *i.e.*, by the district council;
- (II.) main roads and bridges carrying them, which are repairable by the County Council;
- (III.) highways repairable by persons other than the highway authority under an Act of Parliament, or by custom.

The urban district council (s. 144, P. H. Act, 1875), and the rural district council (s. 25, sub-s. 1, Local Government Act, 1894), are the highway authority of the district, except so far as the County Council retain the control of the mains roads in the district.

I. Whether a highway is a highway “repairable by the inhabitants at large” (*i.e.*, by the district council), depends on whether it has been dedicated by the owner to the public as a highway repairable by them, or only as a highway over which the public have the right of passage. This again depends on the evidence of dedication in each particular case, and whether the way was or was not dedicated before the Highway Act, 1835.

Dedication may be by actual grant, or it may be inferred from long and uninterrupted use of a way. If it is established that a public right of way existed before the 1835 Act, the liability to repair the highway attaches to the public. In such case, “‘right’ of passage on a highway and ‘duty’ to repair it are co-extensive terms.” (Wills, J., in *Eyre v. New Forest Highway Board* (1892), 56 J. P. 517.) And in considering whether a dedication has been made prior to 1835, it is immaterial whether any repairs have ever been done by anybody to the way; though if repairs had been done by the parish before that date, it will be strong evidence that it was dedicated as a highway repairable by the inhabitants at large. (See judgment of Wills, J., *ibidem*.)

The formalities required by s. 23 (applicable to new highways) and by ss. 84—92, Highway Act, 1835 (applicable to substituted

highways), must be complied with in the case of highways dedicated to the public since 1835.

An owner wishing to dedicate a new highway must give three months' notice to the district council of his intention to dedicate. The highway must be made up to the council's satisfaction, and must be certified by two justices after having viewed it. This certificate must be enrolled at Quarter Sessions; and then, after the highway has been used by the public for twelve months, and kept in repair by the owner during that period, it becomes repairable by the inhabitants at large. (S. 23, Highway Act, 1835.)

Highways may become repairable by the inhabitants at large, *i.e.*, by the district council by any of these other following means :—

- (a) The district council can agree with a landowner for making, at his expense, roads through his lands for the use of the public. But if two-thirds of the council so consent, the council may agree to pay him any portion of his expenses in making the roads, and can also agree that, on their completion, these roads shall become highways repairable by the inhabitants at large. (S. 146, P. H. Act, 1875.)

N.B.—The formalities of dedication required by s. 23, Highway Act, 1835, *supra*, must be complied with.

- (b) A highway substituted for a highway which has been diverted or stopped up can become repairable by the inhabitants at large. (See *infra*, p. 135.)
- (c) Highways repairable by persons *ratione tenurae*, or by persons under statutory obligation to repair, may become repairable by the inhabitants at large. (See *infra*, p. 125.)
- (d) An area which has been cleared of buildings in pursuance of a reconstruction scheme under Part II. of the Housing of the Working Classes Act, 1890, or as part of an improvement scheme under Part I. of the same Act, may be dedicated by the district council as a highway repairable by the inhabitants at large. (See HOUSING, pp. 211, 203.)

(e) Private streets may be taken over by the district council.
(See *infra*, pp. 169, 179, 180.)

(f) A highway may also have been set out and made repairable by the inhabitants at large by an Inclosure Act.

An urban or rural district council can get rid of their liability to repair an unnecessary highway by getting it stopped up in the manner provided by ss. 84—92, Highway Act, 1835. (See *infra*, p. 132.) But a rural district council can get an order of justices declaring that a highway is unnecessary for public use and not repairable at the public expense, and it will thereupon cease to be so, although not stopped up. (S. 24, Highways and Locomotives Act, 1878.)

The consent of the parish council (or if none, the parish meeting), is required for a declaration that a highway in a rural parish is unnecessary for the use of the public.

This consent must be given as follows: the parish council must give public notice of their resolution giving this consent, and the resolution will not operate (1) unless it is confirmed by the parish council at a subsequent meeting held not less than two months after the notice, or (2) if a parish meeting, held before this confirmation of the consent, resolve that the consent ought not to be given. (S. 13, sub-s. 1, Local Government Act, 1894.)

N.B.—The same formalities are required in the case of the consent of the parish council to the stopping up or diversion of a public right of way, in a rural district. (S. 13, sub-s. 1, Local Government Act, 1894.)

When the parish council's consent has been given, the district council must apply to a court of the petty sessional division in which the highway is situate, for two or more of the justices to view it. If after such view the Court is of opinion that the application ought to be proceeded with, notice in writing must be given to the owners and occupiers of the land abutting on the highway, and public notice must be given of the place and time (not less than a calendar month after the notice), when the Court will hear objectors.

N.B.—These notices must be given by the Court.

The applicant council must (1) advertise in a local newspaper, once at least in each of the four weeks preceding the hearing,

a notice of the time and place appointed for the hearing, and the object of the hearing, together with a description of the highway; and (2) cause a copy of the notice to be affixed, at least fourteen days before the hearing, to the principal doors of every church and chapel in the parish where the highway is situated, or in some conspicuous position near the highway. At the appointed time and place the Court will hear the objections (if any) to the application. Proof must be given to the Court that the requisite notices have been given, and that the parish council have given their consent to the declaration being made. If the Court, by order, declares that the highway is unnecessary, the highway will cease to be repairable at the public expense. There is an appeal to Quarter Sessions against the order.

If on the application of a person interested in the maintenance of a highway which has been declared unnecessary, after that person has given one month's notice in writing to the district council, it appears to Quarter Sessions that from any change of circumstances the road has become of public use, the Quarter Sessions may order the liability of the public to repair the road to be revived. (S. 24, Highways and Locomotives Act, 1878.)

A drift-way, *i.e.*, a way for cattle, or a private carriage-way or occupation-way, *i.e.*, a way made for the use of the occupiers of farm lands, can, by order of justices on the application of a rural district council, be made repairable at the expense of the parish in which it is situated. (S. 36, Highway Act, 1862.) The consent in writing of the owners and occupiers of every part of the way in question must be obtained by the council (S. 36, Highway Act, 1862); but a person who has merely a right of way by the leave or license of the freeholder of the way is not an "owner" or an "occupier" whose consent is necessary. (*R. v. Somers*, (1906) 1 K. B. 326; 75 L. J. K. B. 144.)

A parish council can undertake the maintenance and repair of any footpaths, not being at the side of a public road, within the parish. But the assumption of this responsibility by the parish council will not relieve the rural district council of liability in respect of the repair of such paths. (S. 13, sub-s. 2, Local Government Act, 1894.)

The County Council may contribute towards the maintenance,

improvement and widening of highways and public footpaths which are not main roads (s. 11, sub-s. 10, Local Government Act, 1888) ; but this contribution (which is quite optional) may be made subject to such conditions as to the maintenance of these roads as the County Council and district council may agree upon. (S. 26, sub-s. 3, Local Government Act, 1894.)

II. A main road is a disturnpiked road. (S. 13, Highways and Locomotives Act, 1878.) The footpaths at the side of it are part of the main road. (*Derbyshire C. C. v. Matlock Bath U. D. C.*, (1896) A. C. 315 ; 65 L. J. Q. B. 419.)

The County Council can, on the application of a district council, by order declare an ordinary highway to be a main road if it is a medium of traffic between two great towns, or a thoroughfare to a railway station, or for any other reason that the County Council think fit. This order must be deposited with the clerk of the peace, and must be confirmed within six months by a further order of the County Council. (S. 15, Highways and Locomotives Act, 1878.)

When the County Council declare a road to be a main road, the declaration will not take effect until the road has been put in proper condition and repair by the district council to the County Council's satisfaction. (S. 11, sub-s. 7, Local Government Act, 1888.)

In case of dispute as to whether the road has been put in proper repair, either council can refer it to the arbitration of the L. G. B. (S. 11, sub-s. 9, Local Government Act, 1888.)

The L. G. B. can, on the application of a County Council, by order declare a main road to be an ordinary highway. (S. 16, Highways and Locomotives Act, 1878.) This order need not be confirmed by Parliament. But it cannot be made in respect of a main road in a borough without the consent of the borough council.

The order may be made in respect of any part of a main road. (S. 4, Highways and Bridges Act, 1891.)

Main roads and the bridges carrying them (if these bridges are not repairable by other persons) are repairable by the County Council (s. 11, sub-s. 1, Local Government Act, 1888) ; and the road, the materials, and all drains belonging to it vest in the County Council, and where any sewer or drain is used in

connection with the drainage of a main road, the County Council are to continue to have the right to use it for that purpose.

In case of a difference between the County Council and the district council as to which of them a drain is vested in, or as to the use of a sewer or other drain, either council can have the matter referred to the L. G. B. for arbitration. (S. 11, sub-s. 6, Local Government Act, 1888.)

This sub-section preserves to the County Council the right of using sewers, which by s. 13, P. H. Act, 1875, are vested in the district council, carrying off the drainage of main roads.

An urban council could within twelve months of the 1888 Act coming into force, and can within twelve months of the date when a road becomes a main road, claim to maintain a main road, and in such case that main road is vested in the district council. The County Council, however, must make an annual payment to the district council towards the cost of the maintenance and reasonable improvement of the road (s. 11, sub-s. 2); and the amount must be such as is agreed upon by the two councils, or, in case of disagreement, as may be settled by the L. G. B. (S. 11, sub-s. 3, Local Government Act, 1888.)

The County Council and a district council may agree for the undertaking by the district council of the maintenance, repair, improvement and enlargement of a main road. Or if the County Council so require, the district council must undertake this obligation in consideration of such annual payment as is agreed upon between them, or, in case of dispute, as is settled by the L. G. B. (S. 11, sub-s. 4, Local Government Act, 1888.)

The amount of this annual contribution to be made by the County Council must be determined at the close of each year, and any dispute can only be settled by the L. G. B. (*Sandgate U. D. C. v. Kent C. C.* (1898), 79 L. T. 425.) But the County Council need not make any payment unless satisfied that the repairs or other improvements to the road have been properly executed. (S. 11, sub-s. 5, Local Government Act, 1888.)

When a district council undertake the maintenance of a main road in pursuance of s. 11, sub-s. 4, *supra*, they only acquire the powers of a road authority so far as they are incidental to the repairing of the road. The County Council remain the road

authority, and are entitled to any surplus road materials from the repair of the road. (*Stockport Highway Board v. Cheshire C. C.* (1891), 61 L. J. Q. B. 22.)

If the district council are under an obligation to maintain a main road, they must maintain it by whatever means are appropriate and necessary for the purpose. This may involve, in the case of a road by the sea, the repair of groynes and of a sea wall to prevent the road from being washed away. (*Sandgate U. D. C. v. Kent C. C.* (1898), 79 L. T. 425.)

Maintenance of the road includes the removal of snow from the road. (*Amesbury v. Wilts J.J.* (1883), 10 Q. B. D. 480; 52 L. J. M. C. 64.)

If the County Council are satisfied that any portion of a main road, the maintenance of which has been undertaken by the district council, is not in proper repair, they can give notice to the district council to repair the road. If this notice is not complied with within a reasonable time, the County Council can do the necessary work and recover the cost as a debt due to them by the district council. (S. 11, sub-s. 8.) Any dispute as to this notice is to be referred for settlement to the L. G. B. (S. 11, sub-s. 9, Local Government Act, 1888.)

Any dispute arising under sub-ss. 3, 4, 9 of s. 11, Local Government Act, 1888, *supra*, may be determined by the L. G. B., either as arbitrator or otherwise, at the option of the Board. (Determination of Differences Act, 1896.)

III.—(a) Some highways are by ancient custom repairable by the occupier of the land abutting; this is known as a liability to repair *ratione tenurae*.

The claim that a person is bound to repair a highway *ratione tenurae* must be founded on evidence of immemorial usage, dating back before the reign of Richard I. But a grant from the Crown of a later date may constitute a legal origin of an obligation to repair *ratione tenurae*. So where, in 1773, an owner of land had been granted a license by the Crown to stop up an old highway on condition that he made a new one, and that this new road was kept in repair by himself, his heirs and assigns, it was held that this was sufficient to establish an obligation *ratione tenurae* on an occupier of the estate to repair.

the substituted road. (*Esher and Dittons U. D. C. v. Marks* (1902), 71 L. J. K. B. 309.)

It may happen that a person liable *ratione tenurae* is relieved from having to pay rates for the repair of the highways in the district. This depends on whether he is legally exempt by s. 33, Highway Act, 1835. But there must be evidence of a legal exemption; and the mere fact that he is liable *ratione tenurae* is not sufficient to show that there is an exemption from contributing to the repairs of other highways in the district. (*Ferrand v. Bingley U. D. C.*, (1903) 2 K. B. 452; 72 L. J. K. B. 734.)

If there is an exemption on this account, it will continue as long as the liability *ratione tenurae* exists. When the liability ceases, the exemption will cease. (*Heath v. Weaverham Overseers*, (1894) 2 Q. B. 108.)

This liability to repair *ratione tenurae* will cease on the shape, *termini*, and character of the road being altered. (*R. v. Barker* (1890), 25 Q. B. D. 213; 59 L. J. M. C. 105.)

A person liable to repair a highway *ratione tenurae* can apply to justices for an order relieving him of this liability. The justices can fix a sum—an annual or a lump sum—to be paid by him to the highway authority in full discharge of all claims that may be made thereafter in respect of the maintenance and repair of the highway. The highway will thereupon become repairable by the district council. (S. 35, Highway Act, 1862.) It makes no difference that the justices have fixed a nominal and totally inadequate sum to be paid in composition; and if the occupier of lands liable to repair a highway *ratione tenurae* was legally exempt from highway rates, this order relieving him of his liability will not deprive him of his exemption. (*Dalton Overseers v. North-Eastern Rail. Co.*, (1900) A. C. 345; 69 L. J. Q. B. 650.)

When a highway repairable *ratione tenurae* is widened (under s. 82, Highway Act, 1835), or is diverted or stopped up (under ss. 85 and 92, Highway Act, 1835), justices in Petty Sessions may order that it shall become repairable by the inhabitants at large. The justices, on the report of the two justices who made the view (as to this, refer to details of widening and diversion of highways, *post*), must fix the amount of composition to be paid

annually or otherwise to the district council by the person previously liable *ratione tenurae*. (S. 93, Highway Act, 1835.)

The person liable *ratione tenurae* may make an agreement with the district council that the council shall keep the road in repair at his expense. (S. 148, P. H. Act, 1875.)

If a highway repairable *ratione tenurae* appears on the report of the surveyor not to be in proper repair, and the person liable fails, when requested by the district council, to put it into proper repair, the council can do the work necessary and recover their expenses from him. (S. 25, sub-s. 2, Local Government Act, 1894.)

The occupier of the land is the person alone liable for the repair of highway *ratione tenurae*. (*Cuckfield R. D. C. v. Goring*, (1898) 1 Q. B. 865; 67 L. J. Q. B. 539.) When the person so liable to repair becomes insolvent, the obligation immediately falls on the highway authority. (*Per Lord Halsbury in Sandgate U.D.C. v. Kent C. C.* (1898), 79 L. T. 425.)

(b) The Railways Clauses Consolidation Act, 1845, and the Tramways Act, 1870, make provision for the repair and maintenance of highways in the district, so far as they are affected by railway or tramway undertakings. But these two Acts are general Acts, that is to say, their provisions are only in force so far as they are incorporated in a railway or tramway company's special Act. It is therefore necessary to look at the special Act to find what the company's exact liability may be in respect of the highways and bridges in the district.

The general Act provides that if a railway crosses a public highway (unless the special Act provides otherwise, *e.g.*, by sanctioning a level crossing), the highway must be carried over the railway, or the railway over the highway, by means of a bridge. Such a bridge must be of the dimensions provided for in the general or special Act, as the case may be; and the bridge, with its immediate approaches and all other necessary works connected with it, must be built and afterwards maintained at the expense of the railway company.

Where the special Act prescribed the width of a particular bridge, it was held that the railway company could only be compelled to widen the bridge to the maximum width provided in the special Act, and that this obligation was limited to

widening the bridge proper and not the approaches to it. (*Rhondda U. D. C. v. Taff Vale Rail. Co.*, (1907) 1 K. B. 739; 76 L. J. K. B. 486, affirmed in Court of Appeal.)

The expenses incurred by the local authority in repairing a road over a railway bridge can be recovered by them from the railway company. (*Lancashire and Yorkshire Rail. Co. v. Mayor of Bury* (1889), 14 A. C. 417; 57 L. J. Q. B. 280.)

N.B.—A highway passing under a railway bridge is not repairable by the railway company.

A district council can agree with a railway, canal, or tramway company to maintain at the expense of the rates any existing or projected bridge, viaduct, or arch over a railway, canal, or tramway in the district. And the council can agree to build such a bridge, but at the company's expense; though if two-thirds of the members consent, the council may pay any portion of the cost of construction or alteration of the bridge, or of the purchase money for the land required for the foundation or support of the bridge or for the approaches to it. (S. 147, P. H. Act, 1875.)

A tramway company must maintain and keep in good condition and repair, with such materials and in such manner as the highway authority direct, and to their satisfaction, so much of the road as lies between the rails and extends to eighteen inches beyond and on either side of them. If the company lay double tram-lines at a distance of not more than four feet from each other, the portion of the road between the two tramways must be maintained and kept in repair by the company. (S. 28, Tramways Act, 1870.)

A tramway company were, by their special Act, obliged to keep in good condition the junction of the paving laid and maintained by the company with the surface of the road maintained by the local authority. The tramway was laid on granite setts, but owing to the macadam of the roadway being worn away by the general traffic, these setts formed a ridge, and projected. It was held that the company were under the obligation of maintaining an even contour of the road by a proper junction of the surface of the tramway with the surface of the macadam. (*Mayor of Norwich v. Norwich Tramways Co.* (1904), 91 L. T. 558.) (Subsequently overruled, but not on this point.)

A tramway company who had neglected to comply with the highway authority's direction to put sand on the tramway, which had become worn, and was in damp weather slippery and dangerous to horses, were held liable for an accident to a horse. (*Dublin United Tramways Co. v. Fitzgerald*, (1903) A. C. 99; 72 L. J. P. C. 52.)

A district council can contract or agree with the company to pave and to keep in repair the whole or any portion of the road on which the tramway is laid. (S. 29, Tramways Act, 1870.)

The effect of an agreement by the council to undertake the maintenance of the tramway is to relieve the company from any liability on account of its non-repair. (*Barnett v. Poplar Borough Council*, (1901) 2 K. B. 319; 70 L. J. K. B. 698.)

THE EXTENT OF A HIGHWAY.

The question as to how far a highway extends on either side may be important in connection with a district council's liability to repair and their duty to prevent encroachments. There is a *prima facie* presumption, which can be rebutted by evidence, that the whole space of ground between hedges or fences, including the roadside wastes on either side of the highway, has been dedicated to the public use as a highway. (*Neeld v. Hendon U. D. C.* (1899), 81 L. T. 405.) Vaughan Williams, L.J., in this case, doubted whether any such presumption could arise when a road crossed the uninclosed waste of a manor, i.e., a common, for the fences might have been put up to separate adjoining closes from the uninclosed waste land. And, *per* Lord Russell of Killowen, the nature of the district through which the road passes, the width of the margins, the regularity of the line of hedges, and the levels of the land adjoining the road, are all circumstances which must be taken into account. Where a highway was bounded on one side by a common and on the other side by a hedge, there being a strip of grass between the road and the hedge, it was held that the presumption was that this strip had been dedicated to the public use as a highway. (*Evelyn v. Merrielees* (1900), 17 T. L. R. 152.)

A ditch between a fence and the road may be part of the highway. (*Chorley Corporation v. Nightingale*, (1907) 2 K. B. 637; 76 L. J. K. B. 1003.)

There may be acts of ownership inconsistent with a dedication of a roadside strip of land to the public for use as a highway, *e.g.*, where the tenants of an adjoining farm had been in the habit of erecting hurdles on a roadside piece of land to protect the cattle grazing there from being "bogged," and had ordered away from it gipsies and their encampments (*Belmore v. Kent C. C.*, (1901) 1 Ch. 873; 70 L. J. Ch. 501); or where the lord of the manor had let the right of pasturage on these strips. (*Curtis v. Kesteven C. C.* (1890), 45 Ch. D. 504; 60 L. J. Ch. 103.) If a roadside strip is not part of the highway the local authority have no right to deposit road materials upon it. (*Belmore v. Kent C. C.*)

ENCROACHMENTS.

"Once a highway, always a highway." No encroachment on a highway can avail to deprive the public of the right they have once enjoyed. (*Harrey v. Truro R. D. C.*, (1903) 2 Ch. 638; 72 L. J. Ch. 705.) The district council must prevent any unlawful encroachment on roadside wastes in the district (s. 26, sub-s. 1, Local Government Act, 1894); and with this object they can institute or defend proceedings against the offender. (S. 26, sub-s. 3, Local Government Act, 1894.)

N.B.—In an action by the council for an injunction against the offender, the Attorney-General must be made a party.

Instead of taking legal proceedings, the council can remove the encroachment and recover the expense incurred in so doing from the person who made the encroachment. (*Louth R. D. C. v. West* (1896), 65 L. J. Q. B. 535.)

The parish council can make a representation to the district council of any unlawful encroachment having been made; and the district council must, if satisfied of the correctness of the representation, take the proper proceedings for removing the encroachment. Should the district council neglect to do so, the parish council can petition the County Council, who can, by resolution, transfer to themselves the powers and duties of the district council with regard to the matter. (S. 11, sub-s. 4, Local Government Act, 1894.)

When a road has been set out by Inclosure Commissioners as a public road, or it has since become a public road, the whole

width of the road as set out by the award must be preserved free from obstruction for the use of the public; and the highway authority can cut down trees that have grown up on the side of the road within the limits prescribed by the award. (*Turner v. Ringwood Highway Board* (1870), 9 Equity Cases, 418.)

A strip of land set out by an inclosure award as a footpath cannot subsequently be dedicated by any body for use as a carriage-way. The district council, as the highway authority, can put up a post to prevent its being used for cart-traffic, and a person removing it will be liable for damages for trespass. (*Sheringham U. D. C. v. Holsey* (1904), 91 L. T. 225.)

S. 51, Highway Act, 1864, mentions a number of unlawful encroachments on a highway which can be dealt with under that Act:—

It is an offence to encroach on a highway by making a building, pit, fence, hedge, or ditch, or by placing dung, compost or rubbish, &c. on the side of a highway within fifteen feet of its centre, or to remove turf or soil from the side of a highway, except with the highway authority's consent, and for the purpose of improving the road. And when the highway is fenced on both sides, no such encroachment is to be allowed whereby the width of the highway will be reduced to less than thirty feet between the fences.

This s. 51 only refers to an encroachment on land which forms part of the highway, and which has been dedicated to the public for use as a highway. (*Easton v. Richmond Highway Board* (1871), 7 Q. B. 69; 41 L. J. M. C. 25.)

PUBLIC RIGHTS OF WAY.

There may be highways which are public rights of way, but which involve no liability on anybody to repair them. The question whether a way is a public right of way depends on the evidence of dedication in each particular case.

“In all these cases of right of way it is necessary to remember that the thing to be established is dedication, not user. A highway is not acquired by user. . . . In most of these cases dedication, it is true, is proved by user. But user is but the evidence to prove dedication; it is not user, but dedication

which constitutes the highway; therefore what always has to be investigated is whether the owner of the soil did or did not dedicate certain land to the use of the public." (Buckley, J., *A.-G. v. Esher Linoleum Co. Ltd.*, (1901) 2 Ch. 647; 70 L. J. Ch. 808.)

"Proof of user by the public is in general sufficient evidence of dedication. But dedication to the public may be proved in another way, by proof of acts and declarations of the owner." Cotton, L. J., and Fry, L. J., instanced the setting up a stile on a path by the landowner as an act which would be evidence of dedication. (*Spedding v. Fitzpatrick* (1888), 38 Ch. D. 414.)

There may be a dedication of a public right of way subject to certain reservations, *e.g.*, in the case of a footpath across arable land, there may be a right on the part of the occupier of the land to plough parts of the path in the course of husbandry. If there is such a right reserved and the path is repairable by the inhabitants at large, the council must not repair the path in such a manner as will interfere with the right to plough it. (*Arnold v. Blaker* (1870), 6 Q. B. 433; 40 L. J. Q. B. 185.)

A person may not intend to dedicate a way as a public right of way, but only to give a license to the public to use it. Shutting up the way one day in every year is the common form of showing that only a license to use the way is intended.

Only the freeholder can dedicate a public right of way.

A public right of way must have a definite *terminus* and a definite direction, subject to this: where the way which would naturally be taken is foundrous, the public have the right to deviate in order to get along on those parts which are less muddy or dilapidated.

There is no right on the part of the public to unlimited straying over property. (See judgment of Wills, J., in *Eyre v. New Forest Highway Board* (1892), 56 J. P. 517.)

A district council must prevent the stopping up of public rights of way in the district (s. 26, sub-s. 1, Local Government Act, 1894); and for this purpose the council can institute and defend proceedings; this includes the right to contribute towards the expenses of a person who has taken action to vindicate the existence of a public right of way. (*R. v. Norfolk C. C.*, (1901)

2 K. B. 268; 70 L. J. K. B. 575; s. 26, sub-s. 3, Local Government Act, 1894.)

Before a public right of way in a rural parish can be stopped up or diverted, either by the district council or by a landowner, the consent of the parish council or parish meeting is necessary. (S. 13, sub-s. 1, Local Government Act, 1894, and see *sequitur*.)

DIVERSION AND STOPPING UP OF HIGHWAYS.

If the district council deem it expedient that a highway should be diverted or stopped up, either entirely, or reserving a foot or bridle path, they must direct their surveyor to give notice to two justices to view the highway. Any other person desirous of stopping up or diverting a highway must give notice in writing to the district council, and, if the council consent, the council will then apply to the two justices to view the highway; but the expenses incurred by the council in the matter must be paid to them by that person. (S. 84, Highway Act, 1835.)

In rural districts, a person desiring to stop up or divert a public right of way must get the consent of the parish council (or parish meeting), as well as of the district council. (S. 13, sub-s. 1, Local Government Act, 1894.)

N.B.—The Surrey Quarter Sessions justices refused to enrol a certificate where it appeared that the consent of the parish council had not been obtained until after application had been made by the district council to the two justices to view. The refusal of the justices in Quarter Sessions to enrol the certificate was upheld by the Divisional Court, but on another point. (See *R. v. Surrey JJ.* (1907), *infra*.) It would seem, however, the safest course that the parish council's consent should be obtained before the district council apply to the justices to view.

If on such view it appears to the two justices that the road as diverted will be nearer or more commodious to the public, and the owner of the land through which the new road is proposed to be carried gives his written consent; or if in the case of the stopping up of a highway it appears to these justices that the way is unnecessary and should be stopped up, then the justices must direct the district council's surveyor to put up a notice (in the form of Schedule 19, Highway Act, 1835) at the

two ends and at the side of the highway which is to be diverted or stopped up, and to publish the notice in a local newspaper for four successive weeks, and to affix a similar notice to the door of the church of every parish in which the highway is situated on four successive Sundays. On being satisfied by proof (*e.g.*, an affidavit) that the notices have been published, &c., and a plan describing the old and the new highway, and stating the metes, bounds, and admeasurements of the old and new highways, and verified by a competent surveyor, having been supplied to the two justices, they must grant a certificate. (S. 85, Highway Act, 1835.)

N.B.—The requirements of this section must be strictly complied with. The admeasurements of the particular highways must be stated on the plan. A plan merely drawn to scale, though the scale is stated on the plan, is not a sufficient compliance with the requirements of this section. (*R. v. Surrey JJ.*, "The Times," 14th December, 1907.)

The justices, when they make a certificate for the diversion of a highway, must have before them the consent in writing of the owner of the lands through which the new highway is to be made, but no mention of this consent in writing need appear in the certificate. (*R. v. Surrey JJ.* (1872), 26 L. T. 22.)

The certificate cannot be given until the period of time allowing of the publication of advertisements in the local papers, and of the notice on the church door has expired; but it is not necessary that the notices which are to be put up in the highway should be put up twenty-eight days before the certificate is given, or remain up every day of the four weeks. (*R. v. Kent JJ.*, (1905) 1 K. B. 378; 74 L. J. K. B. 50.)

If the two justices refuse to give a certificate, two other justices may be approached by the council to view the highway in question, without it being necessary for the council to pass a fresh resolution directing their surveyor to give notice to the two justices to view. (See judgments of Divisional Court in *R. v. Kent JJ.*, (1904) 2 K. B. 349; 73 L. J. K. B. 858.)

The justices' certificate must certify that they have viewed the highway, and must state (1) in the case of diversion, that the new highway will be nearer or more commodious than the old, and if nearer, the number of yards or feet by which it is

nearer; if more commodious, the reasons why it is so; and (2) if the highway is to be stopped up as unnecessary, the reasons why it is unnecessary.

The certificate, plan, proof and (in case of diversion) the written consent of the owner (see *supra*) must be lodged by the district council with the clerk of the peace for the county, and after the expiration of four weeks, the certificate may be enrolled and the order for diversion or stopping up made at Quarter Sessions. (S. 85, Highway Act, 1835.)

More than one highway can be included in a certificate and order where they are so connected that they cannot be separately diverted or stopped without interfering with each other. (S. 86, Highway Act, 1835.)

A person who thinks himself aggrieved, on giving the surveyor of the district council ten days' notice in writing, together with a statement of his grounds of appeal, can appeal to Quarter Sessions against the diversion or stopping up of a highway. (S. 88, Highway Act, 1835.)

The appeal will be settled by a jury. (S. 89, Highway Act, 1835.) The appellant will not succeed if the jury find that the proposed new highway will be more commodious, and that he is not a person aggrieved; but he will succeed if the jury find that, though the new highway will be more commodious, he will be injured or aggrieved by the alteration in the highway being allowed. (*Walker v. York Corporation*, (1906) 1 K. B. 724; 75 L. J. K. B. 413.)

If there is no appeal, or if the appeal is dismissed, the Quarter Sessions must make an order for the diversion or stopping up of the road. (S. 91, Highway Act, 1835.)

N.B.—They can refuse to make the order if the certificate is substantially defective, *e.g.*, if it does not contain the requisite measurements of the highways, or state that the justices making it have viewed the highway in question. (*R. v. Worcestershire JJ.* (1854), 23 L. J. M. C. 113.)

In the case of a diversion, the old highway must not be stopped up until the new highway has been completed and put into good condition and so certified by two justices to have been completed, after a view. This certificate must be lodged with the clerk of the peace and enrolled by him. The substituted

road will then become a public highway with the same liability to repair as attached to the old highway. (S. 92, Highway Act, 1835.)

IMPROVEMENTS TO HIGHWAYS, ETC.

An urban council (and a rural council if invested by the Local Government Board with the necessary power) can purchase premises for the purpose of widening, opening, enlarging or otherwise improving a street.

An urban council, with the consent of the Local Government Board, can purchase premises for the purpose of making a new street. (S. 154, P. H. Act, 1875.)

See also the powers given by s. 146, P. H. Act, 1875, with regard to the making of new streets, *supra* (p. 119); and see *infra* (p. 136), as to the powers of a district council and County Council to enter into an arrangement for the construction or improvement of bridges or highways under the Highways and Bridges Act, 1891.

S. 82, Highway Act, 1835, provides a means whereby a narrow highway capable of being widened, can be widened:—

Two justices, after viewing it, can order the highway to be enlarged up to a width of thirty feet. This order will not enable the highway authority to pull down any building, or to take the ground from a garden, yard, paddock, plantation, avenue to a house, or any inclosed ground set apart for building or for a nursery for trees.

Compensation must be paid to the owner of the land proposed to be taken. If the amount of compensation cannot be agreed upon, or if the owner refuses to treat, then on the certificate of the two viewing justices and on proof that the highway authority have served fourteen days' notice on the owner that they intended to apply to Quarter Sessions, the justices at Quarter Sessions must empanel a jury to assess the compensation.

The amount is not to exceed forty years' purchase of the clear annual value of the land to be taken, but may include a reasonable sum to compensate the owner for the expense of making new hedges and ditches.

On payment or tender of this amount by the highway

authority, the ground taken is to be deemed for all purposes to be a public highway.

All minerals got without breaking the surface of this ground are preserved to the owner, and so also is the timber growing on such ground.

The timber must be felled, if the owner fails to remove it, by the highway authority within the months specified for lopping trees by s. 66, Highway Act, 1835 (see *infra*, p. 160), and must be laid on the adjoining land for the benefit of the owner. (S. 82, Highway Act, 1835.)

A district council can enter into an agreement with the County Council for the construction or improvement (or freeing from tolls in the case of a bridge) of a bridge, main road or highway in the district. If the district council consider that any parish will be especially benefited by these works, they may, if the County Council and parish council or meeting approve, charge the whole or a portion of the expenses on that parish. The district council can borrow money for carrying out work in pursuance of such an agreement with the County Council. (S. 3, Highways and Bridges Act, 1891.)

N.B.—With the exception of the powers given by this Act and by s. 147, P. H. Act, 1875 (see *supra*, p. 127), a district council have no power to build a bridge.

Public cart-ways leading to a market town must not be made and maintained at a width less than twenty feet, horse-ways not less than eight feet, and foot-ways at the side of public cart-ways not less than three feet, provided that the space between the fences bordering the highway admits of such measurements. (S. 80, Highway Act, 1835.)

A gate across a public cart-way must not be less than ten feet wide, or across a public horse-way, *e.g.* a bridle-path, less than five feet wide, clear between the posts. An owner who fails to enlarge or to remove a gate not of the requisite width, after receiving twenty-one days' notice in writing from the highway authority, is liable to a daily penalty of 10s. (S. 81, Highway Act, 1835.)

COUNCIL'S DUTIES AND POWERS WITH REGARD TO REPAIR OF HIGHWAYS.

All streets in an urban district which are or become highways repairable by the inhabitants at large, together with the pavements, stones and other materials and buildings (*e.g.*, man-holes), vest in and are under the control of the district council. (S. 149, P. H. Act, 1875.)

The vesting of a street in a district council only gives the council such property in the street—below it, above it, and on its surface—as is necessary for the control, protection and maintenance of the street as a highway for the use of the public. The ownership of the soil of the street remains with the owner of the land over which the street runs—the presumption being, unless there is evidence to the contrary, that the soil of the street, *usque ad medium filum*, belongs to the owner of the premises or lands on either side of it.

The vesting of a street in the council has been held to give them the right to let the rights of pasture on the roadside strips. (*Coverdale v. Charlton* (1879), 4 Q. B. D. 104; 48 L. J. Q. B. 128.)

CORRIGENDUM (p. 136).

This paragraph should read:—*N.B.*—With the exception, &c., &c., an *urban* district have no power to build a bridge. But any rural district council which are the successors of a highway board or of a rural sanitary authority having the powers of a highway board, as the highway authority of the district (s. 25, sub-s. 1, L. G. Act, 1894), can build or enlarge bridges (s. 48, Highway Act, 1864; s. 8, South Wales Highway Amendment Act, 1878).

P. H. Act, 1907. S. 47 of Part III. of this Act empowers district councils to provide public conveniences and lavatories under streets repairable by the council; and, further, s. 28 of the same Act enables the council to remove, use and dispose of old materials existing in the street at the time of the

execution by the council of any works in the street, if, after receiving forty-eight hours' notice from the surveyor, the owners of the buildings and lands in such street fail to remove this material. The council must, however, pay to the owners the reasonable value of these materials, which, in case of dispute as to the amount, must be settled in the manner provided in s. 308, P. H. Act, 1875. (ARBITRATION, p. 18.)

N.B.—The above ss. 47 and 28 of the P. H. Act, 1907, only apply when they are in force in the district by L. G. B. Order.

The council may raise or lower the soil of a street (this, of course, includes the carriage-way as well as the foot-pavement), and may place fences and posts for the safety of foot-passengers. (S. 149, P. H. Act, 1875.)

Alterations in the level of a street must not interfere with a person's reasonable access from the street to his premises; and the council must make compensation (s. 308, P. H. Act, 1875) for any damage caused to an owner or occupier of premises through any such alteration being made.

The council must cause all streets vested in them to be levelled, paved, metalled, flagged, channelled, altered and repaired as occasion may require. (S. 149, P. H. Act, 1875.)

Paving a highway with tarmac is a repairing within this section. (*R. v. Brighton Corporation* (1907), 23 T. L. R. 441.)

A rural council may be invested by the Local Government Board with the powers and duties contained in s. 149, *supra*; but a rural council as the successors of the highway authority of the district (s. 25, sub-s. 1, Local Government Act, 1894), and an urban council as the successors of the surveyors of highways, must, as occasion requires, repair the highways in the district. (S. 6, Highway Act, 1835.)

There is, however, a distinction between a council's liability under s. 149, P. H. Act, 1875, and under s. 6 of the Highway Act, 1835, which is illustrated in the case of *Burgess v. North-rich L. B.* (1880), 6 Q. B. D. 264; 50 L. J. Q. B. 219. As a precaution against the subsidence of the ground due to the brine-pumping operations in the neighbourhood, the houses in a particular street had been built on timber foundations, so arranged that the whole fabric could be raised by screw-jacks.

The street subsided and became liable to be flooded; and the local authority put material into it so as to restore it to its former level. The owners of the houses on being notified by the local authority that the street level was to be raised, raised their houses; and claimed compensation under s. 308, P. H. Act, 1875, for the expense entailed. It was held that the local authority had been repairing the road as occasion required within the meaning of s. 6, Highway Act, and had not been causing the soil of the street to be raised within the meaning of s. 149, P. H. Act, and that they were, therefore, not liable to pay compensation.

S. 72, Highway Act, 1835, imposes penalties for wilful damage to highways; and by s. 149, P. H. Act, 1875, there is a 5*l.* penalty for displacing or injuring the pavement or stones, &c. of a street, or for injuring trees in a street vested in the council, and there is a further penalty of 5*s.* for every square foot of pavement, &c. injured or displaced by the offender.

In the case of injury to trees, the Court can fix the amount of compensation to be paid by the offender to the council. (S. 149, P. H. Act, 1875.)

Persons, however, have for certain purposes (*see sequitur*) the right to break open the pavement. •

The owner or occupier of premises has the right to have a reasonable access from the highway to his premises. In *St. Mary's, Newington v. Jacobs* (1871), 7 Q. B. 47; 41 L. J. M. C. 72, the defendant was proceeded against by the local authority under s. 72, Highway Act, 1835, for wilful damage to the highway. Jacobs had sought permission to make a cart-way (at his own expense) across the pavement for carts to pass to his premises, where he stored heavy machinery. The authority refused their permission, and declined to make the cart-way themselves. Jacobs accordingly drove his carts across the pavement and broke the flag-stones. It was held that he could not be convicted of doing wilful damage.

S. 18, P. H. Act, 1907, specially deals with the making of a cart-way across a pavement, and further indicates that the occupier of premises who wishes to make this means of access to his premises must bear the expense. This section enacts

that the local authority may allow the provision and use of a passage across the kerbed or paved footway of a street vested in the council to or from any premises fronting or adjoining the street, for cattle, any beast of draught or burden, waggons, carts or other wheeled carriage exceeding four feet in width or two hundred-weight in weight.

The section imposes certain conditions governing the exercise of this right:—

- (a) persons intending to provide these new means of access must give notice in writing of their intention to the council, and must at the same time submit for their approval a plan showing the position, gradient, and mode of construction of the intended means of access;
- (b) when the plan, with or without amendment, has been approved by the council, and they have given notice of their approval to the person intending to make this passage, he may proceed to execute the work subject to the supervision and satisfaction of the council, and in accordance with the approved plan;
- (c) After its completion, the passage must be used subject to the law relating to the use of highways, *e.g.*, the occupier will be liable for obstructing the use of the footpath if he leaves carts standing on this passage.

The section apparently gives the council the right to say whether such passage shall or shall not be made across a pavement; but there is an appeal to Quarter Sessions against their withholding their consent. (S. 7, sub-s. 1 (b), P. H. Act, 1907.)

N.B.—S. 18 is only in force when it or Part II. of the Act has been applied to a district by L. G. B. Order.

An owner or occupier of premises has the right under s. 21, P. H. Act, 1875, to connect his drains with the council's sewer, and for this purpose he may break open the pavement of the street; but he has no right to break open the pavement for the purpose of constructing an inspection chamber in the pavement. (*A.-G. v. Ashby* (1907), 23 T. L. R. 498.) In districts where s. 29 of Part II., P. H. Act, 1907, is in force, the consent of the council is made necessary before any excavation is made in a street for this or any other purpose.

The owner of the minerals, or of the right to work mines,

under a highway may work the mines provided no damage is done to the highway. (S. 23, Highways and Locomotives Act, 1878.) Should the road be let down by the working of a mine, the local authority can recover from him as damages the whole of the expense they have been put to in restoring the road to its original level. (*Wednesbury Corporation v. Lodge Holes Colliery Co.*, (1907) 1 K. B. 78; 76 L. J. K. B. 68.)

If the footway of a street repairable by the council is injured by or in consequence of excavations, or other work on lands adjoining it, the council can repair or replace the injured path, and can recover the damages and expenses arising therefrom from the owner of the lands or from the person who is responsible for the injury. (S. 20, P. H. Act, 1907.)

N.B.—This section is only in force when it or Part II. of the Act has been applied to the district by L. G. B. Order.

Any district council can undertake or contract for the watering and cleansing of the streets. (S. 42, P. H. Act, 1875.) A council, urban or rural (s. 25, sub-s. 1, Local Government Act, 1894), may also by agreement with the persons liable to repair a road (*e.g.*, a railway, canal, or tramway company, or a person liable *ratione tenuræ*, or the owner of a private street), undertake to cleanse and water it, as well as to keep it in repair. (S. 148, P. H. Act, 1875.)

A court or passage, which is not a highway repairable by the inhabitants at large, leading to the back of several buildings in separate occupations, if not kept properly swept and clean by the occupiers of the buildings, can be so kept by the district council. The expense can be recovered by the council from the occupiers in such proportions as the surveyor determines; but if his apportionment is disputed by an occupier, the amount payable by him must be settled by a Court of summary jurisdiction. (S. 27, P. H. Act, 1890.)

N.B.—This section, which cannot be adopted by a rural council, is only in force in those districts where Part III. of the P. H. Act, 1890, has been adopted.

S. 19 of Part II., P. H. Act, 1907, empowers the district council, when urgent repairs are necessary in a private street, to give notice to the frontagers to execute the repairs, and, on this notice not being complied with, to do the work and recover

the expense from the frontagers. (See further as to this, *post*, p. 179.)

LIABILITIES OF COUNCIL FOR NON-REPAIR OF HIGHWAY.

A district council can be indicted for the non-repair of a highway repairable by the inhabitants at large, but only in the manner provided by s. 10, Highways and Locomotives Act, 1878. A district council cannot be indicted at common law for non-repair (*R. v. Mayor of Poole* (1887), 19 Q. B. D. 602; 56 L. J. M. C. 131); nor have justices power to order an indictment to be preferred against a district council under the Highway Acts, 1835 or 1862. (*R. v. Biggleswade R. D. C.* (1900), 64 J. P. 442.)

The procedure under s. 10, Highways and Locomotives Act, 1878, is as follows:—

Complaint must be made to the County Council, and if the County Council are satisfied that the district council have made default in repairing the highway, they can order the district council to do the repairs within the time limited in the order. If within ten days after receipt of the order, the district council give notice to the clerk of the County Council that they decline to comply with it until their liability to repair has been determined by a jury, then the County Council must prefer an indictment against the district council at the next Assizes. Meanwhile the county's order to repair will be suspended. If the verdict of the jury is against the district council, they must carry out the County Council's order. (See *R. v. Mayor of Wakefield* (1888), 20 Q. B. D. 810; 57 L. J. M. C. 52.)

If complaint is made to the L. G. B. that a district council have failed to fulfil their duty under s. 149, P. H. Act, 1875, to keep the streets in proper repair, the L. G. B., on being satisfied of the justice of the complaint, can order the district council to carry out their obligations. This order can be enforced by a *mandamus*. (S. 299, P. H. Act, 1875.)

On the complaint of a parish council that a rural district council have failed to keep the highways in proper repair, the County Council can transfer to themselves the district council's powers in the matter, and can recover the expense of repairing the road from the defaulting council, or the County Council can

order the district council to effect the necessary repairs, and, in case of refusal, can appoint some person to do the work, and can recover the cost in the manner provided by ss. 299—302, P. H. Act, 1875, from the district council. (S. 16, sub-ss. 1 and 2, Local Government Act, 1894.)

A district council may or may not be liable for injury caused to a person through a highway being in a state of disrepair. The liability depends on whether the condition of the road is due to the “non-feasance” or to the “mis-feasance” of the council.

“Non-feasance” is the leaving undone the things that ought to have been done; “mis-feasance” is the doing of the things that ought to be done in an improper manner.

No liability will attach to a district council for injury caused by “non-feasance,” i.e., merely on account of the highway having been allowed to get out of repair.

Two illustrations may be given :—

The cover of a manhole projected owing to the surface of the road having been worn away, and the local authority had neglected to fill up the depression in the roadway. The plaintiff's horse tripped over the projecting cover and was injured. It was held that the local authority were not liable for their “non-feasance.” (*Thompson v. Brighton Corporation*, (1894) 1 Q. B. 332; 63 L. J. Q. B. 181.)

A carriage-way had been cut through a footpath by the owner of some stables to give access from them to the road. There was a drop between the surface of the path and the surface of the cutting of about eighteen inches. The plaintiff, while walking along the path (which was vested in the local authority), fell over this cutting and was injured. It was held that no action would lie against the local authority for allowing this cutting through the path to remain so as to be a source of danger to foot passengers, and that the fact that the local authority had gravelled the path did not affect their non-liability. (*Cowley v. Newmarket L. B.*, (1892) A. C. 345.)

A district council will be liable for injury caused by their “misfeasance.”

A local authority after laying a sewer in a street, filled up the trench, but left it in a foundrous condition. In the vicinity,

but on the opposite side of the street, the authority were engaged with some other work to the street, and near this work some carter, not in the employment of the authority, and without their leave, emptied a cart-load of rubbish in the street. This heap of rubbish was left by the local authority's men unfenced and unlighted. A cabman driving at night down the street, finding the road where the trench had been filled up bad going, pulled out and ran against the rubbish heap, and was injured. It was held that the restoring of the road (where the trench had been filled up) so as not to leave it fit for traffic, and the non-removal of the rubbish heap, were acts of "misfeasance" for which the local authority were liable. (*Bull v. Mayor of Shoreditch* (1904), 68 J. P. 415.)

A district council, with the intention of renewing them, removed guiding posts and rails which separated a highway liable to be flooded from a dyke alongside of it. These posts were not put up again for some time, and while the road was in this unprotected state and flooded, a person drove into the dyke and was drowned. The jury found that the removal of the posts under the circumstances was not consistent with a reasonable regard for the safety of people using the road. On this finding the Court of Appeal held that the act of the district council was an act of "misfeasance." (*Whyler v. Bingham R. D. C.*, (1901) 1 K. B. 45; 70 L. J. K. B. 207.)

The district council are not liable for the negligence of an independent contractor; but they will be liable for his negligence if they have reserved the right of controlling the contractor and regulating the way in which he does his work under the contract. (*Penny v. Wimbledon U. D. C.*, (1899) 2 Q. B. 72; 68 L. J. Q. B. 704.) In this case, under a contract for the making up of a road, the contractor was required to execute the work in the plans and specification in accordance with the drawings and instructions given him from time to time by the council's surveyor. The plaintiff was injured by falling over a heap of earth which the contractor had left in the road unlighted. Both contractor and council were held liable.

DAMAGE TO ROADS BY EXTRAORDINARY TRAFFIC OR EXCESSIVE WEIGHT.

If on the certificate of their surveyor it appears that, having regard to the average expenses, extraordinary expense has been incurred in repairing a highway by reason of the damage caused by excessive weight passing along or extraordinary traffic on the highway, the district council can recover that extra expense (s. 23, Highways and Locomotives Act, 1878) from the person by or in consequence of whose order (s. 12, sub-s. 1 (c), Locomotives Act, 1898) such weight or traffic has been conducted.

If the amount does not exceed 250*l.* it can be recovered by an action in the County Court; and in the High Court if exceeding that sum. (S. 12 (a), Locomotives Act, 1898.)

A person intending to use a highway for heavy traffic may compound with the council for any damage he may cause to the road (s. 23, Highways and Locomotives Act, 1878), that is to say, if the council are agreeable.

The surveyor's certificate is a condition precedent to recovering these extra expenses, and the certificate may include more than one road. (*Wirral Highway Board v. Norrell*, (1895) 1 Q. B. 827; 64 L. J. M. C. 181.) The sum which the council seek to recover must have been actually expended by the council, otherwise they have no cause of action. (*Little Hulton U. D. C. v. Jackson* (1904), 68 J. P. 451.)

This extra expenditure is recoverable from "the person by or in consequence of whose order" the extraordinary traffic has been brought on to the highway. In *Epsom U. D. C. v. London C. C.*, (1900) 2 Q. B. 751; 69 L. J. Q. B. 933, the County Council had made two contracts for building operations in the plaintiffs' district, and damage was done to the highways, necessitating extra expense to the district council, by the exceptionally heavy traffic conducted there by the contractors. It was held that the County Council were the persons "by or in consequence of whose order" this extraordinary traffic was brought on to the roads.

The words "by or in consequence of whose order" do not mean that the damage must have been the necessary consequence of the order, but must have been in fact a consequence of it.

(*Per Buckley, L.J., Bromley R. D. C. v. Croydon Corporation*, "The Times," November 26th, 1907.) Lord Alverstone (*ibidem*) distinguished this case from *Egham R. D. C. v. Gordon*, (1902) 2 K. B. 120 ; 71 L. J. K. B. 523.

Proceedings for the recovery of expenses incurred by reason of damage to roads by extraordinary traffic must be commenced within twelve months from the time at which the damage was done. But when the damage is the consequence of any particular building contract or work extending over a long period, proceedings can be commenced not later than six months after the completion of the building contract or work. (S. 12, sub-s. 1 (b), Locomotives Act, 1898.)

N.B.—The word "work" does not extend to such a thing as a supply of materials or a contract of service, *e.g.*, haulage of stones for highway purposes, but refers to a work of construction or demolition *ejusdem generis* with the building contract mentioned in the section. (*Bromley R. D. C. v. Croydon Corporation, ubi supra.*)

The time limit prescribed by the Public Authorities Protection Act, 1893, has no application to proceedings under these Acts of 1878 and 1898. (*Kent C. C. v. Folkestone Corporation*, (1905) 1 K. B. 620 ; 74 L. J. K. B. 352.)

A maintenance clause in the contract binding the contractor after the actual completion of the work under the contract will not postpone the date from which the period of limitation fixed by s. 12, *supra*, will begin to run. (*Lancaster R. D. C. v. Fisher*, (1907) 2 K. B. 516 ; 76 L. J. K. B. 1070.)

A district council will not recover these extra expenses for damage caused to the roads if it is shown that the damage was owing to the roads not being kept up to a proper standard of repair, having regard to the traffic of the district. (*A.-G. v. Scott*, (1902) 2 K. B. 160 ; 74 L. J. K. B. 803.)

It is the duty of the road authority to alter the standard of repair which the road requires in accordance with the necessities of the traffic. (*Per Wills, J., in Chichester Corporation v. Foster*, (1906) 1 K. B. 167 ; 75 L. J. K. B. 33.) In this case a water main belonging to the corporation had been broken by the defendant's traction engine. The main had been properly laid, and was fit to bear the pressure of the usual and ordinary traffic

in the district. On these facts it was held that, as the defendant had used an engine of a weight beyond that which the corporation had the right to expect on their roads, he was liable for the damage done by it.

"Traffic must of necessity, as time goes on, vary in its character, according to the development of the various industries in the neighbourhood, and traffic which in one year or at one given time may be extraordinary traffic, will in course of time—and it may be in the course of a comparatively short time—become ordinary traffic . . . The test is, whether the particular traffic in question has, by the usage of trade and society, and by the varying circumstances applicable to the case, by that time become such as can fairly be called ordinary traffic." (Wills, J., *Hemsworth R. D. C. v. Micklethwaite* (1904), 68 J. P. 347.)

Excessive weight is distinct from extraordinary traffic. In considering what amounts to excessive weight, the pressure *per square inch* of the engine or vehicle causing the damage is evidence, but it must not be considered apart from the effect of the whole concentrated weight of the vehicles. (*Hemsworth R. D. C. v. Micklethwaite, ubi supra.*)

See further *sequitur*, as to damage done by excessive weight.

LOCOMOTIVES AND HEAVY MOTOR CARS.

The expression "locomotive," as used in the Locomotive Acts, dealing with the use of locomotives on highways, means a locomotive propelled by steam or other than animal power. (S. 17, Locomotives Act, 1898.)

A locomotive to be used on a highway must not exceed nine feet in width or fourteen tons in weight, unless the owner gets the permission of the County Council or borough council, in the case of boroughs with a population of 10,000 according to the 1881 census. (S. 28, sub-ss. 3 and 4, Highways and Locomotives Act, 1878.)

N.B.—This s. 28 does not apply to light locomotives or motor cars within the meaning of the Motor Car Acts of 1896 and 1903.

A locomotive on the highway is not to draw more than three waggons or trucks, exclusive of a waggon solely used for carrying water for the locomotive, unless the County Council

or borough council, as the case may be, consent to a greater number being drawn (s. 3, sub-s. 1, Locomotives Act, 1898); and a waggon is not to carry a greater weight than four tons on each pair of wheels, or two tons on each wheel, unless the waggon is built on springs, in which case one-sixth more weight is permissible. (S. 4, Locomotives Act, 1861.)

The County Council (or borough council) may, however, permit weights in excess of those above mentioned; and these limitations on weight do not apply to a waggon carrying a single heavy article, *e.g.*, block, cable, roll, vessel of stone or metal of greater weight than sixteen tons; but the fellies, tyres, or shoes of such waggon must not be less than eight inches in breadth, and any damage arising from the use of it is to be deemed to be damage caused by excessive weight within the meaning of s. 23, Highways and Locomotives Act, 1878. (S. 1, Locomotives Act, 1898.)

A district council can erect in their district machines for weighing locomotives and loaded waggons drawn by them; and the council's servants can require persons in charge of these vehicles to proceed to the machines in order that the locomotive or the waggons may be weighed. The council must pay any loss caused by the delay due to weighing if the weight should be found to be within the lawful limits; and any dispute as to the amount must be settled by arbitration under the Arbitration Act, 1889.

When a locomotive or waggon has been weighed by the district council's officials, a certificate must be given to the person in charge, and this certificate shall be an exemption from further weighing during the journey.

A district council can borrow money as under the P. H. Act, 1875, for the purpose of establishing these weighing machines. (S. 4, Locomotives Act, 1898.)

The County Council (or borough council above referred to) can by bye-law prohibit or restrict the use by locomotives of highways and bridges which are unsuitable or unsafe for such traffic. Special leave may be given for the use of such a road or bridge for exceptional purposes; but with regard to a bridge repairable by a district council or other person, this special leave cannot be given without the consent of, and may be

subject to payment of the cost of temporarily strengthening the bridge to, the authority or person liable for the repairs of the bridge. (S. 6, Locomotives Act, 1898.)

Locomotives belonging to the district council, when used by them in the district, need not be licensed by the County Council (s. 9); nor need they be registered. (S. 10, sub-s. 6, Locomotives Act, 1898.)

The Heavy Motor Cars Orders, 1904 and 1907, made by the L. G. B. under the powers conferred on the Board by the Locomotives on Highways Act, 1896, and Motor Car Act, 1903, contain regulations as to the weights and construction of heavy motor cars and their use on highways and bridges.

A "heavy motor car" is a car exceeding two tons in weight unladen. It may be used on a highway if its weight unladen does not exceed five tons, or if its weight unladen, together with the weight of a vehicle drawn by it, does not exceed six and a half tons. In the case of military motor cars, these weights are increased to six and eight tons respectively. The axle-weights, construction and width of tyres, the speed, and size of wheels of heavy motor cars are all regulated by the Heavy Motor Car Order, 1904.

A heavy motor car on a highway within half a mile from the district council's weighing machine can be required to be driven to the machine for weighing by any authorized official of the district council, if he has reason to believe that the axle-weight of the car exceeds the registered weight. (Heavy Motor Car Order, 1904.)

A heavy motor car must not be driven over a bridge forming part of a highway except with the consent of the authority, *e.g.*, the district council, liable to repair it, if on a notice board, which must be set up in a conspicuous position at each end of the bridge, the authority states—

- (a) that the bridge is insufficient to carry a heavy motor car the registered axle-weight of any axle of which exceeds three tons, or the registered axle-weights of the several axles exceed in the aggregate five tons or any greater weight prescribed in the notice; or
- (b) that the bridge is insufficient to carry a heavy motor car drawing a trailer, if the registered axle-weights of the

several axles of the motor car and trailer exceed in the aggregate five tons, or a greater weight prescribed in the notice.

Any difference as to the sufficiency of the bridge is to be settled by arbitration, and if the arbitrator decides in favour of the sufficiency of the bridge, or if, within a month after a request in writing from the owner of the heavy motor car, the bridge authority neglect to become a party to the submission to arbitration, then the car may be driven across the bridge in future and the notices must be removed. But this will not prevent the bridge authority from setting up notices specifying greater axle-weights than those mentioned in the notices which have had to be removed.

This notice on the bridges must contain the name of the authority or other person liable to repair the bridge.

N.B.—The above provisions replace those originally contained in Article XIV. of the 1904 Heavy Motor Car Order. (Heavy Motor Car Order, 1907.)

INTERFERENCE WITH ROADS BY PERSONS UNDER STATUTORY POWERS.

The Waterworks Clauses Act, 1847, the Gasworks Clauses Act, 1847, and the Electric Lighting Act, 1882, and Clauses Act, 1899, and the Tramways Act, 1870, all provide for the "undertakers" having the statutory power—whether by special Act or by Provisional Order confirmed by Act of Parliament—of breaking up streets and erecting apparatus in streets in connection with their particular undertakings.

These Acts are general Acts, and their provisions must be incorporated either *in toto* or in a modified form in the undertakers' special Act; and therefore it is always necessary to look to the special Act to find out the exact extent to which the undertakers' powers go.

An urban district council which have adopted Part II. of the Public Health Act, 1890, can make bye-laws for preventing danger or obstruction to the public from posts, wires, tubes or other apparatus stretched or placed above, over, along, or across a street for telegraph, telephone, lighting, signalling or other purpose. (S. 13, P. H. Act, 1890.) The adoption of Part II.

of this Act must be by resolution of the council, and a copy of the resolution must be sent to the Board of Trade. (S. 3, P. H. Act, 1890.)

These bye-laws, and any alteration or repeal, must be submitted to, and confirmed by, the Board of Trade; and reasonable notice of the intended submission to the Board of Trade must be given by the council, through the medium of advertisement in a local newspaper and circular letter, to the persons owning or leasing the wires, &c. to which the bye-laws are to apply. (S. 13, P. H. Act, 1890.)

These bye-laws will not apply to apparatus belonging to a railway or canal company, and used by the company on their property in connection with their business. (S. 13, P. H. Act, 1890.)

Nor will the bye-laws apply (a) to the apparatus and property of the Postmaster-General, or (b) to the works of "Undertakers" under the Electric Lighting Acts. (S. 15, P. H. Act, 1890.)

The Postmaster-General has the exclusive right of transmitting public telegrams and telephone messages, but he may authorize other persons by special license to do so. An urban district council's bye-laws, therefore, will only be applicable to the wires and posts of the licensees of the Postmaster-General and to private wires.

Telegraph and telephone apparatus must not be laid down *under* streets, lands and buildings within an urban district without the consent of the district council. The depth and course of the works are to be such as are agreed upon between the parties, or, in case of inability to agree, as are settled by two justices. (Ss. 9 and 10, Telegraph Act, 1863, and s. 3, Telegraph Act, 1892.)

Posts and wires must not be erected by the Postmaster-General on highways *above* ground except with the consent of the highway authority. (S. 12, Telegraph Act, 1863.)

If this consent is not given within twenty-one days after it has been requested, a difference is to be deemed to have arisen between the council and the Postmaster-General. (S. 3, Telegraph Act, 1878.) This difference is to be referred for settlement to a stipendiary magistrate in the district, or, failing such,

to the County Court judge. Either party, within twenty-one days after the award has been made, can, by notice to the other, require the difference to be referred to the Railway Commission. (S. 4, Telegraph Act, 1878.)

The Postmaster-General can delegate his powers under the Telegraph Acts, 1863—1889, to other persons as his licensees, but a licensee can exercise these powers only in an urban district or such area adjoining on an urban district as is specified in the license. Further, a licensee cannot exercise any of these powers without the consent of the district council in an urban district and of the County Council elsewhere. (S. 5, Telegraph Act, 1892.) This right to give or withhold their consent is absolute, and cannot be questioned by a reference to a County Court judge under s. 4, Telegraph Act, 1878. (*National Telephone Co. v. Tunbridge Wells Corporation* (1901), 85 L. T. 368.)

Before breaking up a street or a public road, the Postmaster-General or his licensees must give notice to the highway authority (*i.e.*, the district council or County Council, as the case may be) of the intention to open the road, and specifying the time when the work will be begun.

In the case of underground work, ten days' notice must be given; and for above-ground work, five days' notice. In an emergency, notice must be given as soon as practicable.

Roads are to be broken up under the superintendence of the highway authority, who must be paid the reasonable expenses of such superintendence, if they choose to exercise it. (S. 17, Telegraph Act, 1863.)

Subject to any stipulations, the road must be restored to as good a condition as it was before it was broken up. The rubbish must be removed, and the work during its continuance must be fenced and properly lighted at night. The highway authority must also be paid all reasonable expenses of keeping the road in good repair for six months afterwards, so far as such expenses have been increased by the breaking up of the road. (S. 18, Telegraph Act, 1863.)

The highway authority may, however, undertake the filling in of the ground, the restoration of the road, &c. at the expense of the Postmaster-General or his licensees. (S. 19, Telegraph Act, 1863.)

In the event of its being necessary for repairs and alterations to be made in a road, the Postmaster-General or his licensee, at their own expense, must move and replace posts, &c. in such manner and in such position as the local authority require. The local authority must give one month's notice of their requiring telegraph posts, &c. to be moved. (S. 15, Telegraph Act, 1863.)

MISCELLANEOUS POWERS WITH REGARD TO HIGHWAYS.

An urban council may provide such public clocks as they consider necessary and fix them on public buildings, or, if the owner or occupier consents, on a private building. The council can cause these clocks to be lighted at night, and may remove them from time to time to such other situations as the council think convenient. (S. 165, P. H. Act, 1875.) An urban council which have adopted s. 46 of Part III., P. H. Act, 1890, can pay the cost of the repairing, winding up and lighting of any public clock, though it is not vested in them. (S. 46, P. H. Act, 1890.)

N.B.—This s. 46 cannot be adopted by a rural council.

The owner of cattle, who has no right of pasture on the roadside strips forming part of the highway, is liable to the penalties prescribed by s. 25, Highway Act, 1864, if his cattle are found straying or lying on the highway or by the side of it except where the road passes over a common. And if he has the right of pasturage at the side of the road, that will not entitle him to have his cattle straying on the road. (*Golding v. Stocking* (1869), 4 Q. B. 516; 38 L. J. M. C. 122.)

See *infra*, p. 158, a district council's powers under s. 80, P. H. Act, 1907, as to the driving of cattle through the streets.

The district council can set up direction posts and boundary stones. (S. 24, Highway Act, 1835.)

The district council have power to make, scour, cleanse and keep open ditches, drains, &c., and also to make such tunnels, trunks, plats or bridges, as are necessary, in or through lands adjoining or lying near to the highway. Payment must be made by the council to the owners or occupiers of the lands, if they are not waste or common, for any damage done in the process. (S. 67, Highway Act, 1835.)

N.B.—In 1865 the law officers gave their opinion that the effect of this section is to empower, but not to compel, the highway authority to cleanse ditches in a more effectual manner than the landowners could be compelled to cleanse them. If the landowner claims the materials taken out of his ditch, he is entitled to them. (See 29 J. P. 319, where there is reported the opinion of the law officers.)

The highway authority, if they take steps under this section, cannot recover from the owner of the ditch any expenses incurred in the cleansing of the ditch, but, on the other hand, must pay the owner for any damages sustained by him in consequence. There is, however, an obligation at Common Law on owners of ditches adjoining a highway to keep them in such a condition that no nuisance and obstruction is caused to the highway. If by reason of a roadside ditch not having been properly cleaned a nuisance and obstruction is caused to the highway, the council might bring an action against the owner for an injunction and damages. (*A.-G. v. Waring* (1899), 63 J. P. 789.) Such an action would have to be brought with the sanction and in the name of the Attorney-General.

A ditch may be dedicated as part of the highway. (*Chorley Corporation v. Nightingale*, (1907) 2 K. B. 637; 76 L. J. K. B. 1003.)

Where for more than thirty years surface water from a road had been carried by a pipe on to land adjoining, it was held that this pipe was a drain, and that the landowner could not stop the water from flowing on to his land, as the presumption was that when the drain was originally made, it was made by the surveyor of highways of the period under the 1835 Act. (*A.-G. v. Copeland*, (1902) 1 K. B. 690; 71 L. J. K. B. 472.)

A person who alters or interferes with these ditches, &c., or with any tunnels or plats or bridges over them without the consent of the council, will be liable for the expense of reinstating them, and, in addition, to a penalty of three times the amount of this expense. (S. 68, Highway Act, 1835.)

The sinking of a pit or the erection of a steam-engine or machinery within twenty-five yards of a cart-way, or the erection of a windmill within fifty yards, is prohibited unless screened so as not to be dangerous. Nor must fires be made

for lime- or brick-burning within fifteen yards of a cart-way unless properly screened. (S. 70, Highway Act, 1835.) Steam-ploughs (s. 6, Locomotives Act, 1865), and steam-engines for threshing purposes (Locomotive Threshing Engines Act, 1894), are excepted.

In districts where s. 31 of Part II., P. H. Act, 1907, is in force, if any land (other than land forming part of a common) adjoining any street is unfenced, or the fence is out of repair, and owing to the absence or inadequate repair of the fence the land is a source of danger to passengers, or is used for immoral or indecent purposes, or for any purpose causing inconvenience or annoyance to the public—the L. G. B., on the application of the council, can empower them, after fourteen days' notice has been given to the owner or occupier to erect or to repair the fence, to do the work themselves. The expense can be recovered from the defaulter summarily as a civil debt.

Unfenced quarries, &c. near a highway and barbed-wire fencing can be dealt with as nuisances. (See NUISANCES, p. 268.)

Subject to certain conditions, stones lying on the surface may be gathered, and gravel and other material for road purposes may be dug, from private lands by the district council. In either case one month's notice in writing, signed by the surveyor, must be served on the owner and occupier of the land from which it is proposed to take the material, should the owner or occupier refuse their consent to the material being removed. When this notice has been given, two justices, after hearing the objectors, may in their discretion grant the council a license to enter on the lands and take the material required. In the case of stones lying on the surface, the council must pay for the injury done to the land by their removal, but not for the price of the stones. But when gravel, &c. is dug from private lands, the material, as well as the damage done by its removal, must be paid for. The justices cannot license the digging and taking of materials from a garden, yard, avenue to a house, lawn, park, paddock, inclosed plantation, or inclosed wood not exceeding 100 acres in extent. Sea-beach is not to be taken if its removal is likely to cause inundation, or to increase the danger of encroachment by the sea.

The district council can also dig gravel, &c. on commons for

the use of the roads (ss. 51—54, Highway Act, 1835); but with regard to commons, this right to take material has been restricted by s. 20, Commons Act, 1876, which provides that when a common is regulated by a Board of Agriculture Order, or is subject to a scheme for its regulation, materials must not be taken without the consent of the conservators of the common, or, if they refuse this consent, without an order of two justices in petty sessions.

The justices can make the granting of this order subject to conditions under which the right to take materials is to be exercised. (*Hayes Common Conservators v. Bromley R. D. C.*, (1897) 1 Q. B. 321; 66 L. J. Q. B. 155.)

An urban district council can cause the houses in a street to be numbered, and can paint or put up on the houses at the end or corner of a street the name of the street; and there is a penalty for defacing a number or a name. The council can require the occupier of a house to mark his house with the number approved by the council and to renew it if obliterated; and there is a penalty for neglecting to comply with the council's directions. (S. 160, P. H. Act, 1875, incorporating ss. 64 and 65, Towns Improvement Clauses Act, 1847.)

In any district where s. 21, Part II., P. H. Act, 1907, is in force the council may, with the consent of two-thirds in number and value of the ratepayers in a street, alter the name of the street or any part of it. The section also empowers the council to paint or mark the name of the street on a conspicuous part of any building or other erection, and imposes a 40s. penalty for obliterating, removing or defacing such name.

A district council, however, have no power to name a new street or, apart from the power given by s. 21, P. H. Act, 1907, to alter the name of an existing street contrary to the owner's wishes. But where a district council had approved plans for the laying out of a new street which the owner decided to name M. Avenue, but the council put up a board naming it C. Avenue, which the owner painted out, it was held that, though the council could not give it a name, the owner was rightly convicted of defacing the name on the council's board. (*Collins v. Hornsey U. D. C.*, (1901) 2 K. B. 801; 70 L. J. K. B. 802.)

S. 72, Highway Act, 1835, imposes penalties for a variety of

offences in relation to the use of a highway, *e.g.*, riding on foot-paths, injuring the road, direction posts, bridges, parapets, &c., pitching tents or booths on the highway, wantonly letting off fireworks or firearms within fifty feet of the highway, and obstructing the highway by depositing materials upon it or otherwise.

If timber or other material is left on a highway so as to be a nuisance or obstruction, and is not removed by its owner after notice from the council, the council, on the order of a justice in writing, can dispose of it and apply the proceeds towards the highway expenses. (S. 73, Highway Act, 1835.)

S. 29, P. H. Act, 1907, prohibits the deposit of any building materials, rubbish, or other thing, or excavations being made, in streets repairable by the inhabitants at large, without the consent of the district council. When this consent is given, the person depositing the stuff in the street or making the excavation must cause it to be sufficiently fenced, and also lighted from sunset to sunrise, and he must remove it or fill up the excavation (as the case may be) when required to do so by the council. Contravention of this section entails a 5*l.* penalty, and a 40*s.* daily penalty, and, further, the council can remove the stuff or fill up the excavation, and recover the expense from the offender summarily as a civil debt.

N.B.—This section is in force only when it or Part II. of the P. H. Act, 1907, has been applied by L. G. B. order to the district.

Ss. 76—78, Highway Act, 1835, deal with offences by owners and drivers of vehicles using the highway.

The penalties and forfeitures imposed by the Highway Act, 1835, are payable half to the informer and half to the highway authority; but if the highway authority are the informers, the whole is payable to them, and must be applied towards the highway expenses. (S. 103, Highway Act, 1835.)

An urban council which have adopted Part III., P. H. Act, 1890, can authorize the erection of statues and monuments in any street or public place, and can, further, maintain them as well as any monument or statue erected before the adoption of the Act by the council. Statues and monuments which have

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been authorized by the council to be erected may be removed by the council. (S. 42, P. H. Act, 1890.)

N.B.—A rural council cannot adopt this section.

An urban council which have adopted Part III. can make street refuges in the streets repairable by the council. (S. 39, P. H. Act, 1890.) The council can also erect and maintain cabmen's shelters, and can make regulations as to the terms and fees (if any) to be charged, and bye-laws for regulating the conduct of the persons using them. (S. 40, P. H. Act, 1890.)

N.B.—Neither of these sections can be adopted by a rural council.

In districts where Part VII. (Police) of the P. H. Act, 1907, has been put in force by order of a Secretary of State, the district council are enabled to exercise a control over the traffic.

The council can make regulations with respect to streets, to be specified in the regulations, which are specially liable to be obstructed by reason of the amount and nature of the traffic. These regulations, which must be approved by the Secretary of State, may be made for (a) prescribing the line to be kept at any street crossing by all persons riding and driving; and (b) for requiring the drivers of heavy and slow-moving vehicles to keep to a particular portion of the street. A person contravening a regulation after a warning given by word or signal by a police constable stationed in the street to direct the traffic is liable to a 40s. penalty. (S. 78, P. H. Act, 1907.)

Dangerous riding and driving entails a 40s. penalty, and the offender may be arrested without a warrant by any constable who witnesses the offence. (S. 79, P. H. Act, 1907.)

The council may, by order, prescribe the streets in which, and the manner according to which, the leading or driving of animals may be permitted in the district. This order will only operate between 9 a.m. and 9 p.m. and will not prevent the owner of the animals from driving them to or from his premises, and the council must not interfere with the leading or driving of animals to any duly licensed slaughter-house. The route or routes prescribed by the council must not be such as to prevent the passage of cattle between any market on the one hand, and any railway station, landing wharf, or any place beyond the district, on the other hand; and the council must allow at all

times a reasonably short and efficient route or routes for the passage of such animals. (S. 80, P. H. Act, 1907.)

A district council have only indirectly (that is to say by getting the County Council to move in the matter) any control over the speed of motor-cars in their district. S. 9 of the Motor Car Act, 1903, empowers the L. G. B. to fix the speed limit for motor cars at ten miles an hour in certain areas on the application of the local authority. For the purpose of this application and for the purposes of putting up notices of the speed limit and danger signs, the "local authority" are, in boroughs with a population of over 10,000, the borough council, and, as respects any other area, the County Council.

Under s. 8 of the same Act the L. G. B. may make regulations to prohibit or restrict the driving of motor cars on any specified highway which does not exceed sixteen feet in width, or on which ordinary motor traffic would, in the opinion of the L. G. B., be especially dangerous.

An urban council which have adopted Part III., P. H. Act, 1890, can plant trees in any public highway, provided that the trees do not hinder the reasonable use of the highway, or become a nuisance to any adjoining owner or occupier. (S. 43, P. H. Act, 1890.)

N.B.—This section cannot be adopted by a rural council.

S. 64, Highway Act, 1835, prohibits the planting of any tree or bush within fifteen feet from the centre of the carriage-way, and this restriction would apply to planting by district councils.

It is an offence to injure trees growing in a street which is vested in the district council, the offender being liable, in addition to the penalty prescribed, to pay to the council such compensation for the damage as the Court may award. (S. 149, P. H. Act, 1875.)

If a highway is prejudiced, on account of the sun and wind being excluded from it, by the shade of any hedges or trees (except trees planted for ornament or for shelter to a hop-ground, house, building or court-yard), or if an obstruction is caused by a hedge or tree, the owner can be summoned on the application of the highway authority, and the justices can order his hedges to be cut, pruned or plashed, or his trees to be pruned or lopped, or in the case of an obstruction, the tree or

hedge to be removed. A copy of the order must be served on the owner, and he must comply with it within ten days after receiving it. If he makes default, he is liable to a penalty of 40s., and the highway authority can then carry out the work authorized by the order and recover the charges in so doing, over and above the penalty, from the owner. (S. 65, Highway Act, 1835.)

“Lopping” means taking off the branches, and does not mean cutting off the top of a tree. (*Unwin v. Hanson*, (1891) 2 Q. B. 115; 60 L. J. Q. B. 531.)

“Owner” means the man in actual occupation of the land on which the tree is. (*Woodard v. Billericay H. B.* (1879), 11 Ch. D. 214; 48 L. J. Ch. 535.)

No person is to be compelled, nor a highway authority permitted, to prune a hedge at any other time than between the last day of September and the last day of March; and no person is to be obliged to fell any timber trees growing in hedges at any time, except where the highways have been ordered to be widened or enlarged (see s. 82, Highway Act, 1835), or then to cut down or grub up an oak except in April, May or June, or an ash, elm, or other trees except in December, January, February, or March. (S. 66, Highway Act, 1835.)

N.B.—The latter part of the section refers to felling trees; it does not apply to the pruning or lopping of trees.

S. 66 does not mean that justices cannot order a tree which is an obstruction to be removed unless the highway is to be widened. A tree that is an obstruction can be ordered to be removed at any time, though the actual removal is only to be carried out in pursuance of the justices’ order in the particular months mentioned. (*Bullen v. Wakely* (1898), 77 L. T. 689.)

The Highway Amendment Act, 1885, empowers the highway authorities in Wilts, Dorset, Somerset, Devon and Cornwall to cut or prune a hedge or to lop a tree *at any time* if the shade is harmful to the road, or to remove an obstruction to a highway by a bank or anything growing upon it. The consent of the owner and occupier of the premises on which the tree, &c. is must, however, first be obtained.

An urban council can provide and maintain, in proper and convenient situations, urinals, closets and other similar con-

veniences for public accommodation. (S. 39, P. H. Act, 1875.) S. 20 (in districts where Part III. is adopted), P. H. Act, 1890, enables an urban council to make bye-laws for the use and management of public conveniences and charges for the use of water-closets provided by the council, and also to lease these conveniences to any person. No person (railway companies excepted) may erect in a street or in a place accessible from a street a public convenience without the written consent of the council; and the penalty for contravening this enactment is 5*l.* and a daily penalty of 20*s.* for every day the construction remains after notice has been given by the council for its removal. (S. 20, P. H. Act, 1890.)

N.B.—This section cannot be adopted by a rural council.

In districts where s. 43 of Part III., P. H. Act, 1907, is in force, the district council can require the owner of a urinal or other sanitary convenience opening on to a street (whether it was erected before or after this section came into force in the district) to remove it if it is so placed or constructed as to be a nuisance or offensive to public decency. If the owner fails to comply with the council's notice to remove it, he is liable to a penalty and daily penalty of 20*s.* and 10*s.* respectively. (S. 43, P. H. Act, 1907.)

S. 47 of Part III. (when in force in the district), P. H. Act, 1907, extends the powers given by s. 39, P. H. Act, 1875, and s. 20, P. H. Act, 1890, to urban councils, and enables any district council to maintain and provide, in proper situations in or under any street vested in the council, sanitary conveniences and lavatories. The council can employ attendants, make charges (except in the case of a urinal only), make bye-laws for the management of these places and as to the conduct of persons frequenting them. The council may also lease these places for such periods, rents, and on such conditions as they think proper. (S. 47, P. H. Act, 1907.)

A district council acting under the powers given by this section would not need to obtain the consent of the owner of the sub-soil of the street before excavating for the purpose of making a public convenience under the street. (Cf. *Tunbridge Wells Corporation v. Baird*, (1896) A. C. 434; 65 L. J. Q. B. 451, referred to *supra*, p. 137.)

As to what is a proper and convenient situation for a public convenience, this must depend on the particular circumstances. Where a council, in pursuance of the powers given by s. 39, P. H. Act, 1875, erected a public urinal within twelve feet of the entrance-gates to a private house, it was held that this was not a proper situation. (*Leyman v. Hessle U. D. C.* (1902), 1 L. G. R. 76.)

PRIVATE STREETS.

A district council can compel the paving, sewerage, and lighting of private streets—I., under ss. 150 and 152, P. H. Act, 1875; or II., where the Act has been adopted, under the Private Street Works Act, 1892; and III., s. 19, P. H. Act, 1907, provides for urgent repairs to a private street being done on the district council giving notice to that effect to the owners, and enables a majority of the owners, on receiving such notice, to require the council to proceed under the P. H. Act, 1875, or the Private Street Works Act, 1892.

Ss. 150 and 152, P. H. Act, 1875, only apply to urban councils, and the 1892 Act can only be adopted by an urban council; but the L. G. B. can invest a rural council with powers under either Act. S. 19, P. H. Act, 1907, only has effect in those districts to which it or the whole of Part II. of that Act have been applied by order of the L. G. B.

I.—When a private street, or the carriage-way, foot-way, or any other part of it, is not sewered, levelled, paved, metalled, flagged, channelled and made good, or is not lighted to the council's satisfaction, the council can, by notice addressed to the owners or occupiers of the premises fronting, adjoining, or abutting on those parts of the street that need paving, &c., require them to do all or any of the above-mentioned works within the time specified in the notice. Before giving this notice (its form is set out in Form G., Schedule IV., P. H. Act, 1875), plans and an estimate of the probable cost of the works must be prepared by the surveyor. The plans and estimates must be deposited at the council office, and be open to inspection there; and it will be sufficient to refer to them in the notices, without it being necessary to send copies of them with the notices. When part of the street is repairable by the inhabitants at large and part is

not, the whole street may be dealt with as if it was a private street (s. 150, P. H. Act, 1875); and so where a road repairable by the local authority had been lengthened and widened in the course of improvements made by adjacent landowners for their own convenience, it was held that the owners of houses subsequently built and fronting the road were liable under this section for the expenses of paving the entire road. (*Evans v. Newport Sanitary Authority* (1889), 24 Q. B. D. 264; 59 L. J. M. C. 8.)

N.B.—The giving of the notice is a condition precedent to recovering the expenses in case default is made in complying with it, and the council do the work themselves; and the notice must be given to every frontager who is required to execute any of the works. (*Handsworth U. D. C. v. Derrington*, (1897) 2 Ch. 438; 66 L. J. Ch. 691.) And where the notice was served on a person who had ceased to be the owner and was not the occupier of the premises, it was held that the local authority could not recover the paving expenses from the new owner. (*Wallsend L. B. v. Murphy* (1889), 61 L. T. 777.)

In *Acton L. B. v. Lewsey* (1886), 11 A. C. 93; 55 L. J. Q. B. 404, Lord Bramwell recommended local authorities not to prescribe in the notice the mode in which the work should be done, but to content themselves with saying that if it is done in a particular way it will be satisfactory.

“Premises” include land as well as buildings. (S. 4, P. H. Act, 1875.)

“Fronting, adjoining, or abutting.” The ordinary meaning must be given to these words. Premises separated from the street by a wall (*Newport Sanitary Authority v. Graham* (1882), 9 Q. B. D. 183) and by a narrow stream, communication with the street being by bridges (*Wakefield L. B. v. Lee* (1876), 1 Ex. D. 336), were held to front and abut on the street.

But in another case where cottages were separated from the street by a public footpath and an intervening wall belonging to a different owner, and it was proved that the occupiers of the cottages were entirely unbenefited by the paving of the street, it was held, on the particular facts of the case, that the cottages did not front, adjoin, or abut on the street. (*Lightbound v.*

Higher Bebington L. B. (1885), 16 Q. B. D. 577; 55 L. J. M. C. 94.)

The words of the section are "fronting, &c. on such parts" of the street as need to be paved; and where a street was bounded on the north side by a churchyard and on the south side by houses, it was held that the expenses of paving a foot-path on the south side could be apportioned wholly among the owners of the houses on that side. (*Wakefield Sanitary Authority v. Mander* (1880), 5 C. P. D. 248.)

Unless and until a private street has been declared by the council to be a highway repairable by the inhabitants at large, so much of s. 150 as relates to the levelling, paving, metalling, flagging, channelling and repairing may be put in operation by the council as often as is necessary.

Sewering, however, is on a different footing, because sewers vest in and are repairable by the district council by virtue of ss. 13 and 15, P. H. Act, 1875. Streets, on the other hand, do not vest in the council until they become highways repairable by the inhabitants at large. (See judgment of Charles, J., in *Barry L. B. v. Parry*, (1895) 2 Q. B. 110; 64 L. J. Q. B. 512.)

If the sewerage of a street has once been done to the satisfaction of the council, even though the sewer has no outfall and is useless, it will vest in the council, and the frontagers cannot be required to re-sewer the street or to pay for a new system or for an alteration of the system of sewerage of the street (*Hornsey L. B. v. Davis*, (1893) 1 Q. B. 756; 62 L. J. Q. B. 427); and if a part of a street, as distinguished from the whole, has been sewerage to the satisfaction of the council, they cannot put on the frontagers of that part the expenses of sewerage the rest of the street, or of making a new sewer for the whole street, or of altering the sewers of that part of it. (*Per Romer, J.*, in *Handsworth U. D. C. v. Taylor*, (1897) 2 Ch. 442; 66 L. J. Ch. 691.)

When sewerage of a street has been done and accepted by the council is a question of fact. In *Handsworth U. D. C. v. Taylor*, it was held that the approval by the local authority of the plans of a sewer made by an owner for draining his houses in a private street did not constitute a sewerage to the satisfaction of the local authority under s. 150.

If the notice is not complied with by the person served with it within the time specified, the council can carry out the work and recover their expenses summarily from the owners in default, and in such proportion as is settled by the surveyor. In case of dispute, this amount recoverable is to be settled by arbitration, as provided by ss. 180 and 181, P. II. Act, 1875 (ARBITRATION, p. 16); or the council can declare the expenses to be private improvement expenses. (S. 150, P. II. Act, 1875.)

The dispute referred to relates to a dispute about the proportion of expenses which the surveyor has settled shall be borne by the particular owners. When an owner disputed his liability to pay, and not the amount of apportionment, in a letter to the local authority, it was held that this was not a valid notice of objection which entitled the owner to have the dispute settled by arbitration, but that, as the local authority had chosen to accept it as a good notice of objection, they were bound by it. (*Folkestone Corporation v. Brooks*, (1893) 3 Ch. 22; 62 L. J. Ch. 863.)

When a notice disputing the apportionment has been given to the council they must proceed to arbitration, and cannot enforce their claim otherwise. (*Sandgate L. B. v. Keene*, (1892) 1 Q. B. 831; 61 L. J. Q. B. 775.)

If the council have elected to declare the expenses private improvement expenses, they cannot proceed to recover them summarily (*Gould v. Bacup L. B.* (1881), 50 L. J. M. C. 44); but whichever remedy the council adopt, there exists independently the charge on the premises under s. 257 of the Act (see *infra*), which may be enforced by the council if it is impossible to get payment by any other means. (*Tottenham L. B. v. Rowell* (1880), 15 Ch. D. 378; 50 L. J. Ch. 99.)

The district council, when executing the work themselves, are not bound to comply with every requirement specified in their notice. (*Acton L. B. v. Lewsey* (1886), 11 A. C. 93; 55 L. J. Q. B. 404.)

When the owner of a private street has made the carriage-way and foot-path in accordance with the council's bye-laws as to width, the council, in doing paving works under this section, cannot change any part of the foot-way into the carriage-way,

or *vice versa*. (*Robertson v. Bristol Corporation*, (1900) 2 Q. B. 198; 69 L. J. Q. B. 590.)

The council cannot charge frontagers with paving expenses in respect of part of a street which is in the district of another local authority. (*Hornsey (Mayor of) v. Birkbeck*, (1906) 1 K. B. 521.)

"Owner" (from whom the expenses are recoverable) means the person who, for the time being, receives the rack-rent, whether on his own account or as trustee or agent for someone else, or who would receive this rent if the premises were let at a rack-rent. (S. 4, P. H. Act, 1875.)

A local authority which have acquired the lease of a square or garden under the Open Spaces Acts are the "owners." (*St. Mary, Islington v. Cobbett* (1894), 64 L. J. M. C. 36.)

The lord of the manor, who, under an Inclosure Act, was prohibited from receiving rack-rent in respect of a common, was held to be the "owner" liable for the expense of paving a street which ran across the common. (*Meyrick v. A.-G.*, (1894) 3 Ch. 209; 63 L. J. Ch. 209.)

The trustees of a Nonconformist chapel are the "owners." (*Hornsey L. B. v. Brewis* (1890), 60 L. J. M. C. 48.)

The trustees of a national school built on land conveyed for the purpose under the School Sites Act, 1841, are the "owners." But the council must proceed against the trustees personally for the recovery of paving expenses under s. 251, for a charge on the school could not be enforced by a sale, as this would be a contravention of the School Sites Act. (*Hornsey U. D. C. v. Smith*, (1897) 1 Ch. 858.)

The owner of the premises at the date when the paving works are completed is the owner who is liable to the district council for their expenses (s. 257, P. H. Act, 1875), even though, subsequent to the completion of the work and before the apportionment of expenses and demand for their payment, he has parted with his ownership. (*Millard v. Bailby-with-Hexthorpe U. D. C.*, (1905) 1 K. B. 60; 74 L. J. K. B. 45.) And he will be liable though he became owner after the notice to pave, &c. had been given by the council. (*East Ham U. D. C. v. Aylett*, (1905) 2 K. B. 22; 74 L. J. K. B. 471.)

The incumbent or minister of a church, chapel, or place

appropriated to public religious worship, which is exempt from poor rate (by 3 & 4 Will. IV. c. 30), is exempt from liability for paving expenses as the owner or occupier of the place of worship and of any churchyard or burial-ground attached.

These expenses cannot be made a charge on the place of worship or its burial-ground.

The council may bear the expenses of paving works from which an incumbent or minister is exempted by this section. (S. 151, P. H. Act, 1875.)

Cf. s. 16, Private Street Works Act, 1892, under which this option becomes an obligation on the council.

The Act 3 & 4 Will. IV. c. 30, exempts from poor rate churches, chapels and other places exclusively appropriated to public religious worship.

A chapel which consisted of two floors, of which the lower one was used for bazaars and entertainments, was held not to be exclusively appropriated to public religious worship, and therefore not exempt from paving expenses. (*Hornsey L. B. v. Brewis* (1890), 60 L. J. M. C. 48.)

Premises owned and occupied as an armoury and storehouse by a volunteer corps under the Volunteer Act, 1863, are owned and occupied for Crown purposes, and therefore a district council cannot recover paving expenses in respect of them. (*Hornsey U. D. C. v. Hennell*, (1902) 2 K. B. 73; 71 L. J. K. B. 479.)

There is no liability for payment on the owner until three months have elapsed from the apportionment of the expenses by the surveyor. During this period, the owner served with the notice of apportionment may dispute it by giving written notice to the council, in which case the dispute must be settled by arbitration, in accordance with s. 180 of the Act (ss. 257 and 150, P. H. Act, 1875); or he can appeal to the L. G. B. on giving notice in writing to the council within twenty-one days after receiving the notice of apportionment. (S. 268, P. H. Act, 1875.)

If the apportionment is disputed and the parties go to arbitration, the arbitrator's award cannot be enforced under the Arbitration Act, but the council must proceed summarily to recover the amount awarded, and within six months of the

award being made. (*Re Willesden L. B. and Wright*, (1896) 2 Q. B. 412; 65 L. J. Q. B. 567.)

At the expiration of the three months, if the owner has not disputed the apportionment, it will be conclusive against him. (S. 257, P. H. Act, 1875.) He must then be served with a written demand for payment of the sum due by him; a notice of apportionment is not a demand for payment. (*Grece v. Hunt* (1877), 2 Q. B. D. 389; 46 L. J. M. C. 202.)

If the surveyor makes an erroneous apportionment he can, and in fact it is his duty, on objection being made to it, make a fresh apportionment. It is not necessary to deposit fresh plans, &c. in connection with it, but notices of the new apportionment would have to be served. (*Cook v. Ipswich L. B.* (1871), 6 Q. B. 451; 40 L. J. M. C. 169.)

When the apportionment has become conclusive against the owner, the council can proceed against him to recover the sums due either summarily (s. 150) or by an action in the County Court if the amount is below 50*l.* (S. 261, P. H. Act, 1875.)

Proceedings before justices must be taken within six months from the date when payment was demanded. (S. 11, Summary Jurisdiction Act, 1848, and *Grece v. Hunt*.) This six months' time limit does not apply to proceedings in the County Court. (*Blackburn Corporation v. Sanderson*, (1902) 1 K. B. 794; 71 L. J. K. B. 590.)

Notwithstanding the fact that an owner has allowed the three months to elapse without disputing the apportionment, he can, when proceeded against, dispute the whole of his legal liability by proving that he is not a frontager, or that the place in question is not a street, or that it is a street repairable by the inhabitants at large. (*Eccles v. Wirral Sanitary Authority* (1886), 17 Q. B. D. 107; 55 L. J. M. C. 106.) But if he does not challenge his whole legal liability, he cannot dispute the correctness of the apportionment, which will be conclusive against him, even though it is erroneous in that it includes expenses for making up land which does not form part of the street (*Wake v. Sheffield Corporation* (1883), 12 Q. B. D. 142; 53 L. J. M. C. 1), or for making up a part of a street which part is repairable by the inhabitants at large. (*Derby Corporation v. Grudgings*, (1894) 2 Q. B. 496; 63 L. J. M. C. 170.)

Instead of taking proceedings against the owner for the recovery of these expenses, the council can declare them to be private improvement expenses (s. 150), in which case they can make a private improvement rate (s. 213, P. H. Act, 1875), or the council can by order declare that the sum due shall be payable by annual instalments, together with interest at the rate of 5 per cent. per annum, within a period not exceeding thirty years. Each instalment as it falls due can be recovered from the owner or occupier of the premises for the time being. (S. 257, P. H. Act, 1875.)

The expenses apportioned until paid are, together with interest at the rate of 5 per cent. per annum, a charge on the premises. Similarly, when owners have agreed with the council that the works shall be executed by the council, the expenses are a charge on the premises until they have been paid. (S. 257, P. H. Act, 1875.)

This charge exists independently of any of the other remedies against the owner or occupier of the premises; but if the expenses have been declared to be payable by instalments they must remain so payable, and the charge can then only be enforced for instalments in arrear. (*Tottenham L. B. v. Rowell* (1880), 15 Ch. D. 378; 50 L. J. Ch. 99.)

The charge will take effect from the date the works are completed; but it cannot be enforced until the apportionment has become binding and conclusive. (*Stock v. Meakin*, (1900) 1 Ch. 683; 69 L. J. Ch. 401.)

It can be enforced in the Chancery Division of the High Court, or, if the amount does not exceed 500*l.*, in the County Court (s. 67, sub-s. 3, County Court Act, 1888), by an action for a declaration of the charge, and for an order for the sale of the premises.

The enforcement of the charge will be barred by the Real Property Limitation Act, 1874, after twelve years. (*Hornsey L. B. v. Monarch Building Co.* (1889), 24 Q. B. D. 1; 59 L. J. M. C. 105.)

When a private street has been sewered, paved, lighted, &c. to the council's satisfaction, they can, if they think fit, by a notice put up in any part of the street, declare it to be a highway repairable by the inhabitants at large. The street will

then, after one month from the putting up of the notice, become so repairable, unless within that period the owner of the street, or a majority of owners (joint owners count as one), object by notice in writing to the council. (S. 152, P. H. Act, 1875.)

In *A.-G. v. Bidder* (1881), 47 J. P. 263, it was held that the local authority could not take over a private street under s. 152, unless all the works specified in s. 150 had been executed in it. But in districts where Part III., P. H. Act, 1890, has been adopted by the council, s. 152, *supra*, is replaced by s. 41, P. H. Act, 1890, which provides that when *any* of the works mentioned in s. 150, P. H. Act, 1875, have been done in a street, or in any part of the street, the street or that part of it may, by notice posted up in the street, be declared by the council to be a highway repairable by the inhabitants at large. In this case, too, the owner, or a majority (in number or value) of owners, can make objection in writing to the council within one month after the posting up of the notice.

II.—Neither ss. 150, 151 and 152, P. H. Act, 1875, nor s. 41, P. H. Act, 1890, apply in districts where the Private Street Works Act, 1892, is in force. But where a district council had given notices to frontagers under s. 150, P. H. Act, 1875, and after the time specified in the notice for the carrying out of the works had expired the council adopted the 1892 Act, it was held that the adoption of the 1892 Act did not invalidate the notices. (*Heston and Isleworth U. D. C. v. Grout*, (1897) 2 Ch. 310; 66 L. J. Ch. 647.)

When a private street or part of it is not sewered, levelled, paved, metalled, flagged, made good and lighted to the satisfaction of the council, the council may from time to time resolve to do any of the following private street works, *i.e.*, to sewer, level, pave, metal, flag, channel, or make good, or to provide means for lighting the street. The resolution of the council may include several streets or it may be limited to any part of a street. (S. 6, sub-s. 1, P. S. W. Act, 1892.)

Paving, metalling, and flagging include macadamizing, asphaltting, gravelling, kerbing, and every method of making a carriage-way or footway. (S. 5, P. S. W. Act, 1892.)

N.B.—There is no necessity, as under s. 150, P. H. Act,

1875, to give the frontagers notice to do any of these works. In fact the frontagers are given no option of executing the works, although there is nothing to prevent the council and the frontagers agreeing that the latter shall carry out the works.

The council can resolve to do all or any of the private street works mentioned in the section, and from time to time as they appear to the council to be necessary—which means that the council can put this Act into operation in respect of a private street in which private street works have already been done, but which require to be done again.

The council may include in any private street works they resolve upon any works which they think necessary for bringing the street, or part of a street, as regards sewerage, drainage, level, or other matters, into conformity with other streets (whether private streets or not). This power includes the power to provide separate sewers for the reception of sewage and of surface water respectively. (S. 9, sub-s. 1.)

When the council have resolved on doing private street works, the surveyor must prepare—(a) a specification of the works referred to in the resolution, with plans and sections (if applicable); (b) an estimate of the probable expenses of the works; (c) a provisional apportionment of the estimated expenses among the premises liable to be charged. (S. 6, sub-s. 2.) A commission of 5 per cent. for covering the expense of surveys, superintendence and notices may be included in the estimate: this commission, when recovered, must be carried to the credit of the district fund. (S. 9, sub-s. 2.)

The expenses are to be apportioned on the premises fronting, adjoining, or abutting on the street or part of a street in respect of which the expenses are to be incurred; and the apportionment is to be according to the respective frontages. But the council may, if they think it just, resolve that in settling the apportionment regard shall be had to—(a) the greater or less degree of benefit to be derived by any premises from such works; (b) the amount and value of any work already done by the owners or occupiers of such premises. (S. 6, sub-s. 1.)

Further, the council may, if they think it just, include in the apportionment any premises which do not front, adjoin, or abut on the street, but from which there is an access to the

street by a passage or otherwise, and which premises will, in the council's opinion, be benefited by the works. If the council resolve to include any such premises in the apportionment they can fix the proportion of expenses to be charged against them. (S. 10.)

Premises on both sides of a street which is to be made up under this Act must have the expenses charged on them. Where a street was bounded on one side by a row of houses along which ran a footpath, and on the other side by grass land belonging to the local authority, it was held that a separate apportionment charging the expense of making up the footpath could not be made against the owners of the houses, but that this expense must be apportioned among the owners on both sides. (*Clacton L. B. v. Young*, (1895) 1 Q. B. 395; 64 L. J. M. C. 124.)

An apportionment of expenses is bad if it does not include the whole of the premises fronting on the street, whether any one is chargeable in respect of some of the premises or not. (*Herne Bay U. D. C. v. Payne* (1907), 76 L. J. K. B. 685.) In this case the Court expressed the opinion that the council were liable to pay the expenses apportioned in respect of land which had been purchased by the council for public recreation, notwithstanding that it could not be let at a rack-rent.

The specification, &c., estimate, and provisional apportionments which the surveyor has to prepare must comprise the particulars prescribed by Part I. of the Schedule, *sequitur*. They must be submitted to the council for approval. This approval must be by resolution, and may be with or without modification or addition, as the council think fit. (S. 6, sub-s. 2.)

The resolution approving the surveyor's specifications, &c. must be published by advertisement in some local newspaper once in two successive weeks and by means of a poster put up in or near the street in question. (Part II. of Schedule, *sequitur*.) And copies of these documents—*i.e.*, the resolution, specifications, &c., estimate, and provisional apportionment—must be served on the owners of the premises shown in the provisional apportionment to be charged with the expenses within seven days after the first publication of the resolution, &c. (S. 6, sub-s. 3.)

Specifications.—These must describe generally the works and things to be done, and, in case of structural works, must specify the foundations, form, material and dimensions of these works.

Plans and Sections.—These must show the constructive character of the works, the connections (if any) with existing streets, sewers, or other works, and the lines and levels of the work. (P. 171.)

Estimates.—These must show the particulars of the probable cost, including the commission chargeable under s. 9, sub-s. 2, *supra*.

Provisional Apportionments.—These must state the amounts charged on the respective premises, and the names of the owners or reputed owners, and also whether the apportionment is made according to the frontage of the respective premises or not, the measurements of the frontages, and any other considerations on which the apportionment is based. (Part I.) A resolution must be advertised once in each of two successive weeks in a local newspaper, and the public notice of it must be fixed up in or near the particular street once at least in each of three successive weeks. (Part II. of Schedule.)

N.B.—The service of copies of the resolution, provisional apportionment, &c. is a condition precedent to the council recovering the expenses of doing private street works from the owners of premises. Service of these documents must be done in accordance with s. 267, P. H. Act, 1875. A service is a good one if merely addressed to "the owner" and delivered to anybody on the premises, or put up in a conspicuous position thereon. But when a district council addressed by name a notice of a provisional apportionment to a person who was believed by the council to be the owner, but who was not in fact the owner, it was held that they could not recover their expenses of the work done by them from the actual owner. (*Wirral R. D. C. v. Carter*, (1903) 1 K. B. 646; 72 L. J. K. B. 332.)

For one month from the date of the first publication (under Part II., Schedule), the approved specification, estimate, &c., or copies of them certified by the surveyor, must be kept at the council office, and must be open to inspection at all reasonable times. (S. 6, sub-s. 3.)

During this month, an owner shown in the provisional apportionment to be liable may, by notice in writing, object to the council's proposals on all or any of the following grounds—

- (a) That a street, or part of a street, is not a street within the meaning of this Act.
- (b) That a street, or part of a street, is (in whole or in part) a highway repairable by the inhabitants at large.
- (c) That there has been some material defect, informality, or error in, or in respect of, the resolution, notice, plans, sections, or estimate.
- (d) That the proposed works are insufficient or unreasonable, or that the estimated expenses are excessive.
- (e) That any premises ought to be excluded from, or inserted in, the provisional apportionment.
- (f) That the provisional apportionment is incorrect in some matter of fact, to be specified in the objection, or (where under s. 10, *supra*, the council have given effect to the considerations therein mentioned) is incorrect in respect of the degree of benefit to be derived from the works by any persons, or in respect of the amount or value of any work already done by the owner or occupier of the premises.

Joint tenants may make these objections through one of their number, authorized in writing under the hands of the majority to do so. (S. 7.)

"Insufficient" does not mean insufficient, having regard to some matter which might make a better scheme for the neighbourhood in general: the expression points exclusively to a comparison between the work ordered to be done and the method of carrying it out.

"Unreasonable" has a larger meaning: works which are not required and which ought not to be done at all would be unreasonable. (See judgments in *Mansfield Corporation v. Butterworth*, (1898) 2 Q. B. 274; 67 L. J. Q. B. 709.)

After the expiration of the month, the council can apply to a Court of summary jurisdiction to appoint a time for hearing and determining any objections that have been made; and the council must publish and serve the objectors with notice of the time and place so appointed.

At the hearing the Court may quash in whole or in part, or may amend the resolution, plans, estimates and provisional apportionment on the application either of the council or of an objector. (S. 8, sub-s. 1.)

The costs of these proceedings are entirely within the discretion of the Court. (S. 8, sub-s. 3.)

No objection (*i.e.*, under s. 7, *supra*, or s. 12, *infra*) can be made in any other Court or in any other manner than as provided by this Act. (S. 8, sub-s. 2.)

There is an appeal to Quarter Sessions against the Court's decision. (*Pearce v. Maidenhead Corporation* (1907), 76 L. J. K. B. 591.)

When the Court amends a resolution, &c., the amended resolution will take effect as if it had been duly passed *ab initio*; and it will not be necessary for the council to go through the formalities required by s. 6 afresh. (*Twickenham U. D. C. v. Munton*, (1899) 2 Ch. 603.)

The district council may, from time to time, amend the specifications, plans, estimates and provisional apportionments.

But if the total amount of any estimate is increased, the new estimate and provisional apportionment must be published as directed by Part II. of the Schedule, *supra*: these documents must be open to inspection at the office of the council, and copies of them must be served on the owners of the premises affected.

Objections can be made to the increased estimate and new apportionment, and must be determined (see s. 8) in the same manner as objections to the original estimate and apportionment. (S. 11.)

When *any* private street works have been completed and the expense ascertained, the surveyor must make the final apportionment by dividing the ascertained expenses among the owners in the same proportion as the estimated expenses were divided in the original (or amended) apportionment.

Notice of the final apportionment must be served on the owners of premises affected by it, and the final apportionment will be conclusive unless the owners successfully object to it. (S. 12, sub-s. 1.)

When between the services of the notice of the provisional

apportionment and of the notice of the final apportionment an owner mortgaged the premises, it was held that the mortgagee in possession and not the mortgagor was the "owner" on whom the notice of the final apportionment ought to have been served. As the council had served this notice, addressed by name, on the mortgagor, the requirements of the Act had not been complied with, and the council were held to have no power to sell the premises as against the mortgagee for enforcing their charge upon them. (*Maguire v. Leigh-on-Sea U. D. C.* (1906), 95 L. T. 319.)

Within one month after receiving notice of the final apportionment an owner can object to it, by giving notice in writing of his objections to the council, on any of the following grounds—

- (a) That the actual expenses have, without sufficient reason, exceeded the estimated expenses by more than 15 per cent.
- (b) That the final apportionment has not been made in compliance with s. 12, sub-s. 1, *e.g.*, that it was made before the completion of the works and before their cost was ascertained, or that it does not accord with the division of expenses in the original apportionment.
- (c) That there has been an unreasonable departure from the specification, plans and sections. (S. 12, sub-s. 2.)

If an owner's objections cannot be brought within any of the above-mentioned grounds of objection, he has no remedy at all against the final apportionment. (*Per* Channell, J., in *Hayles v. Sandown U. D. C.*, (1903) 1 K. B. 169; 72 L. J. K. B. 48.)

These objections are to be determined in the manner provided by s. 8, *supra*. (S. 12, sub-s. 3.)

The incumbent, minister, or trustee of a church, chapel, or place appropriated to public worship, which is for the time being exempt from poor rate (see 3 & 4 Will. IV. c. 30, *supra*, p. 167), is not liable for private street works expenses as the owner of the place of worship or of any burial ground attached to it. These expenses are not to be a charge on such place. But the district council must pay the proportion of expenses in respect of such premises which enjoy an exemption under this

section. (S. 16.) The money can be drawn from the district fund. (S. 23.)

N.B.—This section differs in two respects from the corresponding s. 151, P. H. Act, 1875. Firstly, it exempts trustees of a place of public worship who have been held to be the “owners” of a chapel under s. 150, P. H. Act, 1875. (*Hornsey L. B. v. Brewis* (1890), 60 L. J. M. C. 48.) Secondly, whereas s. 151, P. H. Act, 1875, makes it optional for the council to defray that proportion of expenses in respect of which a church, &c. is exempt, this s. 16 makes it compulsory.

Of course, the exemption from these expenses depends on whether the place is used exclusively for the purpose of public worship. (*Hornsey L. B. v. Brewis*.)

If a street was not in existence at the date when a district council adopted this Act, but has come into existence since, a railway or canal company is exempt from private street works expenses in respect of premises the property of the company abutting on such street, provided that the premises do not communicate with the street. In such case the proportion of expenses which would have been apportioned on these premises must be paid by the other frontagers.

But if, subsequently, a direct communication is made between these premises and the street, the company must pay to the council that proportion of expenses from which there was an exemption, and the council must divide this sum among those owners who were made liable. The surveyor is to decide the proportions in which this sum is to be divided, and his decision is to be final. (S. 22.)

The Thames Conservators are exempt from liability to pay private street works expenses. (S. 26.)

When the final apportionment has become conclusive the amount fixed by it can be recovered by the council either in the manner provided by ss. 13 and 14, *infra*, or as private improvement expenses are recoverable under the P. H. Act, 1875, including the power of the council to order any such expenses to be payable by instalments. (S. 12, sub-s. 1.)

This amount, together with interest at the rate of 4 per cent. per annum, is a charge on the premises and all estates and

interests in them; and for the recovery of this amount the council are in the same position as mortgagees in possession. (S. 13, sub-s. 1.)

A register of these charges and of the payments made in satisfaction of them must be kept by the council. This register must be open to inspection by any person on payment of a sum, not more than one shilling, in respect of each name and property searched for. The council must also furnish copies of any part of the register to any person applying for them on payment by him of such reasonable sum as is fixed by the council. (S. 13, sub-s. 2.)

The charge on the premises takes effect from the date of the completion of the works, and not from the date of the final apportionment. But the interest which is recoverable will begin to run from the date of the final apportionment, so that an owner objecting to the final apportionment will not escape from paying interest on the amount finally fixed between the date of the final apportionment and the date of the determination of his objection by the justices. (*Stock v. Meakin*, (1900) 1 Ch. 683; 69 L. J. Ch. 401.)

For enforcing the charge, the council can bring an action for a declaration that the council are entitled to a charge on the premises and for an order for the sale of them. (*West Ham Corporation v. Sharp*, (1907) 1 K. B. 445; 76 L. J. K. B. 307.)

But in addition to and without prejudice to any other remedy the council, if they think fit, may from time to time recover summarily or by an action of debt from the owner of the premises for the time being the whole or any portion of the sum due in respect of those premises for private street works. Interest at the rate of 4 per cent. per annum from the date of final apportionment until payment may be recovered with the principal due. (S. 14.)

Though the owner of the premises at the time when the works are completed is primarily liable, this section enables a council to recover from successive owners.

But instead of making the owners of the premises amongst which these private street works expenses have been apportioned, liable, the council may at any time resolve to contribute the whole or a portion of the expenses. This contribution can

be made from the general district rate or fund, or from any other rate out of which general expenses are payable. (S. 15.)

The council, with the consent of the L. G. B., can borrow money for the purpose of temporarily providing for private street works expenses. (S. 18.)

Separate accounts must be kept of all moneys expended and recovered by the council in the execution of this Act. (S. 21, sub-s. 1.)

All moneys recovered must be applied in repayment of money borrowed for executing private street works, or, if there is no such loan, as the L. G. B. directs. (S. 21, sub-s. 2.)

When all or any private street works have been done in a street, and the council consider that it ought to become a highway repairable by the inhabitants at large, they *may*, by notice fixed up in the street, declare it to be so repairable; and thereupon it will become repairable at the public expense. (S. 19.) This section gives the council a discretion.

But if a street is (when the Act is adopted in the district), or has afterwards been, sewered, levelled, paved, metalled, flagged, channelled, and made good (*all* such works being done to the satisfaction of the council), the council *must*, on the written application of the owners of the greater part in value of the premises in the street, and within three months from the application, fix a notice in the street declaring it to be a highway repairable by the inhabitants at large. The street will thereupon become so repairable. (S. 20, P. S. W. Act, 1892.)

III.—Where repairs are required in a private street to obviate or remove danger to passengers or vehicles, the district council can give notice in writing to the owners of the lands and premises fronting, adjoining, or abutting on the street to execute within a specified time such repairs as are described in the notice.

If these repairs are not executed by the owners within the specified time, the council can effect the repairs, and can recover the cost summarily as a civil debt from the defaulters. The amount recoverable from each owner is to be in the proportion which the extent of his premises bears to the total extent of all lands and premises fronting, adjoining, or abutting on the street.

When the name or place of abode of the owner cannot be

found, a copy of the notice must be sent by post to or left with the occupier, or, if there is no occupier, a copy of the notice must be affixed on some conspicuous part of the lands and premises.

In every case in which, within the time specified by the notice, the majority in number or rateable value of owners of lands and premises in the street, by a notice in writing, require the council to proceed, in relation to a street, under s. 150, P. H. Act, 1875, or under the Private Street Works Act, 1892, in districts where the latter Act is in force, the council must so proceed; and then when the necessary works have been completed the council must declare the street to be a highway repairable by the inhabitants at large, and it will become so repairable on and after the date of the declaration. (S. 19, P. H. Act, 1907.)

N.B.—This section is only in force in district to which it or the whole of Part II. of the P. H. Act, 1907, has been applied by order of the L. G. B.

Horseflesh.

Urban and rural district councils can enforce in their districts the Sale of Horseflesh Regulations Act, 1889.

Horseflesh for human food must only be sold in a place on which there is painted or posted in legible characters (of not less than four inches in length, and in a conspicuous position, and visible by night as well as day), words indicating that horseflesh is sold there. (S. 1.)

Horseflesh must not be sold for human food as other meat. (S. 2.)

“Horseflesh” includes the flesh of asses and mules, and horseflesh cooked or uncooked, alone or mixed with any other substance. (S. 7.)

The medical officer, sanitary inspector, or other officer acting on the instructions of the council, can inspect meat which he has reason to believe to be horseflesh, exposed for sale or deposited for the purpose of sale or of preparation for sale, and intended for human food, in any place other than a horseflesh shop. If the meat appears to him to be horseflesh, he

can seize it and take it before a justice (s. 3), who can make such order for its disposal as he thinks fit. (S. 5.) A justice can grant a search warrant. (S. 4.)

The onus of proving that horseflesh exposed for sale, &c. in a place other than a horseflesh shop was not intended for human food, rests on the person so exposing it. (S. 6.)

An offence against this Act entails a penalty of 20*l.*, which is recoverable summarily. (S. 6.)

Hospitals.

A district council can provide a hospital or temporary place for the reception of the sick for the use of the inhabitants of the district.

The council can either build a hospital, or contract for the use of a hospital or part of one, or enter into an agreement with persons having the management of a hospital, for the reception of the sick inhabitants of the district, on payment of such annual or other sums as may be agreed upon.

Two or more local authorities can combine in providing a common hospital. (S. 131, P. H. Act, 1875.)

A local authority are not confined by this section to establishing a hospital within the boundaries of their district. A hospital may be built on the council's land situated within the district of another local authority, and a hospital is not a work which requires the assent of the other authority under s. 285, P. H. Act, 1875. (*Withington L. B. v. Manchester Corporation*, (1893) 2 Ch. 19; 62 L. J. Ch. 333.)

The expense of maintaining a patient, who is not a pauper, in the hospital, is recoverable from him as a debt due to the council within six months of his discharge from hospital, or from his estate in the event of his dying in the hospital. (S. 132, P. H. Act, 1875.)

As to when a patient can be removed to a hospital and detained there at the council's expense, see s. 124, P. H. Act, 1875, and s. 12, Infectious Disease Prevention Act, 1890 (p. 231).

In districts where s. 60, Part IV., P. H. Act, 1907, is in force, the council may remit the cost of maintenance of a patient (who is not a pauper) in hospital if they think such a course is

justified by the circumstances of the case. (S. 60, P. H. Act, 1907.)

A district council are bound to receive into their hospital, as long as there is room, all patients sent thither who are suffering from infectious disease, and who are not in a position to take care of themselves. (*R. v. Rawtenstall Corporation* (1894), 10 T. L. R. 643.)

Where the hospital rules made by the local authority provided that the responsibility of deciding when a patient should be discharged as being free from infection should rest with the visiting physician employed by the local authority, it was held that, if a competent medical man had been employed, and if the patient had been discharged from hospital on his advice, the local authority could not be liable if it subsequently turned out that the patient had been prematurely discharged. The local authority "do not undertake the duties of medical men. They do not undertake to give medical advice, but they do undertake that the patients received in their hospital shall have competent medical advice and assistance." (*Walton, J., Evans v. Liverpool Corporation* (1905), 74 L. J. K. B. 742.)

With the sanction of the L. G. B., a district council can provide a temporary supply of medicine and medical assistance for the poorer inhabitants of the district. (S. 133, P. H. Act, 1875.)

Joint Hospital Boards can be formed by Provisional Order of the L. G. B., on application being made to the board by the local authorities desirous of establishing a common hospital for their districts. (S. 279, P. H. Act, 1875.) The Provisional Order must be confirmed by Act of Parliament, and will set out the respective contributions to be paid by the constituent councils towards the maintenance of the joint hospital, and also the details of management.

ISOLATION HOSPITALS.

The P. H. Act, 1875, leaves it quite optional for a district council to provide their district with a hospital; but a certain degree of compulsion was introduced by the Isolation Hospitals Act, 1893. This Act enabled the County Councils to take steps

for promoting the establishment of hospitals for infectious diseases in districts where hospital accommodation is required.

The Act does not apply to a borough without the consent of the borough council and unless the L. G. B. directs that it shall apply. (S. 2, Isolation Hospitals Act, 1893.)

An application to the County Council for the establishment of an isolation hospital district can be made by a district council or not less than twenty-five ratepayers in any contributory place. (S. 4, Isolation Hospitals Act, 1893.)

But if the medical officer of the county, after holding an inquiry, reports that an isolation hospital is required, the County Council can proceed to form a hospital district without any such application as above mentioned having been made. (S. 6, Isolation Hospitals Act, 1893.)

The application must be made in the form of a petition, and must state the district for which the hospital is required and the reasons for its establishment. (S. 5, Isolation Hospitals Act, 1893.)

N.B.—A local authority, including a joint board, can, with the consent of the L. G. B. and of the County Council, transfer a hospital provided by virtue of the powers given by s. 131 or s. 279, P. H. Act, 1875, to the County Council for use as an isolation hospital. The L. G. B. will direct how the moneys paid to the local authority for the transfer are to be appropriated, and the cost to the County Council is to be treated as "structural" (see p. 187, *infra*) expenses. (S. 1, Isolation Hospitals Act, 1901.)

When the petition has been presented, the County Council, after holding a local inquiry (s. 7, Isolation Hospitals Act, 1893), can either dismiss it or can constitute a hospital district. (S. 9, Isolation Hospitals Act, 1893.) This district may consist of one or more local areas. (S. 8, Isolation Hospitals Act, 1893.)

A "local area" includes an urban or rural district, a parish, or any contributory place. (S. 26, Isolation Hospitals Act, 1893.)

But a local area that is already provided with sufficient hospital accommodation is not to be included in an isolation hospital district without the assent of the local authority as testified by a resolution. If any urban or rural district council,

or a parish council (s. 6, Isolation Hospitals Act, 1901), having jurisdiction in the proposed hospital district, object to the formation of such hospital district or to the addition or subtraction from it of a "local area" within their jurisdiction, they can appeal to the L. G. B.

This appeal must be made within three months from the County Council's order for the formation of the hospital district (s. 8, Isolation Hospitals Act, 1893); and the L. G. B. can then confirm, disallow, or modify the County Council's order. (S. 5, Isolation Hospitals Act, 1901.)

Moreover, the County Council must not make an order constituting an isolation hospital district for one or more parishes or contributory places forming a portion of a rural district or for one single "local area," unless the district council in either case consent or are proved to the satisfaction of the County Council to be unable or unwilling to provide suitable hospital accommodation for that particular place or area. (S. 9, Isolation Hospitals Act, 1893.)

The County Council must send a copy of every order made by them under s. 9 to the L. G. B. (S. 5, Isolation Hospitals Act, 1901.)

When a hospital district has been formed, the County Council must form a hospital committee.

This committee may consist wholly of the representatives of the County Council, or partly of representatives of the County Council and of the "local areas" constituting the hospital district.

But if the County Council make no contribution to the funds of the hospital (see s. 21, p. 187), this committee must consist wholly of representatives of the "local areas," unless the local authorities of those areas desire it to be otherwise. (S. 10, Isolation Hospitals Act, 1893.)

The County Council's representatives on this committee need not necessarily be members of the County Council. (S. 8, Isolation Hospitals Act, 1901.)

If a local authority in the hospital district feel aggrieved by the mode in which this committee is constituted, they can appeal to the L. G. B.

The County Council can make regulations for the election,

qualification of members, and for all other matters relating to the constitution of the committee. (S. 10, Isolation Hospitals Act, 1893.)

The committee will have such powers of providing and managing a hospital as are delegated to it by the County Council; but the County Council must retain the power of inspecting the hospital and raising money by loan for the purposes of the hospital. The committee is a body corporate having a perpetual succession and a common seal, under such style as the County Council confer on it. (S. 10, Isolation Hospitals Act, 1893.)

Besides being able to acquire land by gift or devise (s. 10), the committee can, subject to the County Council's directions, purchase or lease lands, within or without the hospital district, for the erection of an isolation hospital. Ss. 175 to 178 (dealing with the purchase of land) and ss. 296 to 298, P. H. Act, 1875 (relating to Provisional Orders), apply to the purchase of land by a hospital committee. (S. 11, Isolation Hospitals Act, 1893.)

The committee may contract for the reception of patients upon terms to be agreed upon. The expenses incurred under this section are to be defrayed as structural, establishment or patients' expenses, in such proportion as the committee directs. (S. 3, Isolation Hospitals Act, 1901.)

The committee may make rules for the management of the hospital and the patients (s. 12, Isolation Hospitals Act, 1893), and must provide ambulances for conveying patients to the hospital; and the hospital must, as far as practicable, be connected with the telegraph. (S. 13, Isolation Hospital Act, 1893.)

In the event or in expectation of an outbreak of infectious disease, the committee can provide additional hospital accommodation by hiring buildings, tents, &c. for the reception of patients. Moreover, in addition to, or instead of, a central hospital, the committee may establish hospitals in cottages or otherwise, as it thinks fit, and it may provide a temporary hospital until the permanent one is established. (S. 14, Isolation Hospitals Act, 1893.)

Subject to the County Council's regulations, the committee may make regulations for the training of nurses for attending

patients suffering from infectious disease in or outside the hospital. A charge may be made by the committee for the attendance of a nurse on a patient not in the hospital. The expenses of these nurses, after deducting any profits derived from their services, are to be "establishment" (see s. 17, *infra*) expenses. (S. 15, Isolation Hospitals Act, 1893.)

The committee must make a charge in respect of every patient admitted to the hospital of such sum as will be sufficient to defray the expenses defined as "patients'" expenses; and if a patient is brought from beyond the hospital district, such additional sum shall be charged as the committee thinks fit as a contribution towards the "structural" and "establishment" expenses. (S. 16, sub-s. 1, Isolation Hospitals Act, 1893.)

Patients desirous of accommodation of an exceptional character may be so accommodated on their undertaking to pay a sum fixed by the committee, in addition to all other expenses incurred in their maintenance in hospital. These expenses are "special patients'" expenses. (S. 16, sub-s. 2, Isolation Hospitals Act, 1893.)

The expenses of a patient who, at the time of his admission to hospital, or fourteen days previous to it, was in receipt of poor law relief, are recoverable in a summary manner from the guardians of the union from which he was sent. (S. 19, sub-s. 1.)

The expenses of a non-pauper patient are recoverable from the urban or rural district council of the "local area" from which he was sent, and must be paid out of the local rate. (S. 19, sub-s. 2, Isolation Hospitals Act, 1893.) The rural district council is the authority in every rural local area, though the parish council still have the right to object to the L. G. B. against the formation of a hospital district. (S. 6, Isolation Hospitals Act, 1901.)

In a rural district the expenses that can be recovered from the district council by the committee for the maintenance of a patient sent from a contributory place in the council's district, are to be defrayed as "special" expenses. (S. 26, Isolation Hospitals Act, 1893.)

Where a patient has been brought from a place beyond the hospital district, the additional charge which the committee can make in respect of him (see s. 16, sub-s. 1, *supra*) is recoverable,

if a pauper, from the guardians ; if a non-pauper, from the local authority. (S. 19, sub-s. 3.)

"Special patients'" expenses are recoverable summarily from the patient or from his estate. (S. 19, sub-s. 4.)

Burial expenses of a patient dying in hospital are payable in the same manner in which the expenses of his maintenance in hospital are payable. (S. 19, sub-s. 5, Isolation Hospitals Act, 1893.)

"Structural" expenses include the original cost of providing the hospital, the purchase of the site, and the furnishing the hospital with the necessary appliances and furniture for the reception of patients (*e.g.*, the ambulances, under s. 13); also the cost of any permanent extension of the hospital, or alteration, or repair to the drainage, or structural repairs. But ordinary repairs, painting, cleaning, and the renewal or keeping in order of appliances and furniture, or the supply of new appliances or furniture, are not included. These last expenses come within the definition of "establishment" expenses.

"Establishment" expenses include the cost of keeping the hospital, its appliances and furniture, in a state requisite for the comfort of the patients; also the salaries of the doctors, nurses, servants, and all other expenses for maintaining the hospital in a condition fit for the reception of patients.

"Patients'" expenses mean the cost of conveying, removing, and feeding patients, providing medicines, disinfecting, and the cost of all other things required for patients individually, exclusive of expenses which are "structural" and "establishment" charges. (S. 17, sub-s. 1.)

In case of doubt as to whether expenses are "structural," "establishment," or "patients," the committee is to decide to what class they belong, and its decision is final. (S. 17, sub-s. 3.)

But all expenses incurred by the County Council in and about the formation of a hospital district, including the costs of inquiries, and the expense of obtaining land and all preliminary expenses, are to be deemed "structural" expenses. (S. 17, sub-s. 2, Isolation Hospitals Act, 1893.)

The County Council may contribute out of the county rate a capital or annual sum towards the "structural" and "establishment" expenses not only of an isolation hospital established

under the 1893 Act (s. 21, Isolation Hospitals Act, 1893), but also of a hospital provided by a local authority (see *supra*, p. 181) for the reception of infectious disease patients. (S. 2, Isolation Hospitals Act, 1901.)

N.B.—The making of this contribution is entirely optional.

When the hospital district consists of a single "local area" (definition, p. 183), the "structural" and "establishment" expenses are to be defrayed out of the local rate (s. 18), *i.e.*, the rate out of which the expenses incurred in the execution of the P. H. Acts are paid; and in the case of a contributory place in a rural district, these will be "special" expenses. (S. 26, Isolation Hospitals Act, 1893.)

When the hospital district consists of more than one "local area," these expenses are to be paid out of the common fund, to which all the committee's receipts must be carried, and to which the constituent district councils must contribute in the proportions determined by the County Council in their order forming the hospital district. (S. 18, Isolation Hospitals Act, 1893.)

For recovering these contributions, the hospital committee has the same powers as a Joint Board. (S. 18, Isolation Hospitals Act, 1893.)

The accounts of a hospital committee are to be audited in the same manner as those of an urban district council's. (S. 25, Isolation Hospitals Act, 1893.)

The hospital committee has no power to raise a loan: this power being reserved to the County Council. (S. 10, sub-s. 2, Isolation Hospitals Act, 1893.) The committee may, however, borrow money from the County Council, and any such loan must be repaid by the committee to the council, together with such interest as may be agreed upon between them or settled by the L. G. B. (s. 4, Isolation Hospitals Act, 1901), within the time in which the money, if borrowed by the County Council for the purpose of making this loan to the committee, is repayable by the Council. (S. 22, Isolation Hospitals Act, 1893.) This loan would, of course, be repaid by the committee from the same sources as the expenses are payable, by virtue of s. 18, *supra*.

Housing.

COUNCIL'S POWERS AND DUTIES WITH REGARD TO DWELLINGS.

No room where any portion of it is immediately over a privy (not being a water- or earth-closet), cess-pool, midden, or ash-pit, must be occupied as a dwelling- or sleeping-place, or as a work-room. (S. 24, P. H. Act, 1890.) This section only applies in districts where Part III. of the P. H. Act, 1890, is in force. A person who, after one month from the adoption of this Part III. in the district, and after receiving seven days' notice from the council, occupies or allows such a room to be occupied, is liable to a 40s. penalty and a 10s. daily penalty. (S. 24, P. H. Act, 1890.)

A cellar or underground room built or rebuilt after the passing of the P. H. Act, 1875, must not be let for occupation or occupied as a dwelling. (S. 71, P. H. Act, 1875.)

There is a penalty of 20s. for every day it is so occupied after notice in writing from the council as to the prohibition contained in the Act. (S. 73, P. H. Act, 1875.)

Passing the night in one of these places is an occupation of it as a dwelling. (S. 74.)

In the event of two convictions of unlawful occupation of the same cellar as a dwelling (whether the persons convicted are the same or not makes no difference), the Court can order the cellar to be closed temporarily, or can empower the council to close it permanently. (S. 75.)

A cellar-dwelling in existence when the 1875 Act was passed, can only be occupied under certain conditions:—

The cellar must be at least seven feet high in every part of it, and three feet of its height must be above the level of the adjoining street or ground; and

Outside and adjoining the cellar and extending along its whole front, an open area at least two feet six inches wide; and

The cellar must be effectually drained by means of a drain, the uppermost part of which is one foot at least below the level of the floor of the cellar; and

There must be appurtenant to the cellar the use of a closet or privy, furnished with proper doors and coverings; and

The cellar must have a fireplace with a proper chimney or flue, and an external window of at least nine superficial feet in area clear of the sash frame, and made to open in a manner approved by the council's surveyor (but in the case of an inner or back cellar let or occupied with the front cellar as part of the same occupation, the external window may be of any dimensions not less than four superficial feet in area clear of the sash frame).

Steps necessary for access to the cellar must not be over or opposite an external window, and there must be between these steps and the external wall of the cellar a space of at least six inches. (S. 72, P. H. Act, 1875.)

The provisions in ss. 73, 74 and 75, *supra*, apply in the case of a cellar being occupied as a dwelling when it does not comply with the requirements of s. 72.

A canal boat must not be used as a dwelling unless it has been registered (s. 1, Canal Boats Act, 1877) by the owner with a local authority of a district abutting on the canal on which the boat is accustomed or intended to ply. (S. 7, Canal Boats Act, 1877.)

"Canal" includes any river, inland navigation, lake, or water within the body of a county, whether it is or is not within the ebb or flow of the tide; and "canal boat" means any vessel, however propelled, which is used for the conveyance of goods along a canal, and which is not a ship registered under the Merchant Shipping Acts. (S. 14, Canal Boats Act, 1877.) The L. G. B., however, can on the application of a district council that this definition ought to apply to vessels which are registered under the Merchant Shipping Acts, declare that the provisions of the 1877 Act shall apply to such vessels. (S. 10, Canal Boats Act, 1884.)

The boat must only be used as a dwelling for the number of persons of the age and sex for which it is registered. The master (and the owner, too, if he is in fault,) is liable to a 20s. penalty for each occasion on which the boat is used in contravention of the Act. (S. 1, Canal Boats Act, 1877).

In the Canal Boats Order, 20th March, 1878, the L. G. B. has framed regulations concerning the registration, and lettering, and numbering of boats, for fixing the number of persons who may be allowed to dwell in a canal boat, for promoting cleanli-

ness, and for the prevention of the spread of infectious disease. *Inter alia*, these regulations require that a boat before registration must be inspected by some person appointed by the council, who must make and submit a report in the form of Schedule A. of the Order to the council. On being satisfied that the conditions required by these regulations have been complied with, the council must grant a certificate of registry. The owner of the boat must pay a registration fee of 5s. The certificate must be in the form of Schedule C. of the Order. Notice of the change of master must be given to the council in writing by the owner.

There is a 20s. fine, which may be recovered summarily, for a breach of these regulations by a master or owner. (S. 2, Canal Boats Act, 1884.)

“Master” means the person who has the command or charge of the boat. “Owner” includes a person who, though only the hirer of the boat, appoints the master and the other persons working it. (S. 14, Canal Boats Act, 1877.)

The certificate must be given in duplicate to the owner, and the master must have the keeping of one. (S. 3, Canal Boats Act, 1877.) It becomes void in the event of any structural alterations in the boat which affect the conditions on which the certificate was obtained. (S. 1, Canal Boats Act, 1884.)

After registration the boat must be marked with the word “registered,” with the name of the place where it is registered, and the registered number. (S. 3.) And the boat must be so marked, &c. on both sides or on the stern. (S. 7.)

The council of the district in which a canal is must enforce the Canal Boats Acts and the L. G. B.’s regulations; and further, must, within twenty-one days after 31st December in each year, make a report to the L. G. B. as to the execution of the provisions of the Act and the regulations in the district. (S. 3, Canal Boats Act, 1884.)

The expenses incurred by the council in carrying out these provisions are to be defrayed as under the P. H. Act, 1875; in the case of a rural council they are to be deemed to be “general” expenses. (S. 8, Canal Boats Act, 1877.) Any fines for breach of the Act or regulations are to be applied by

the council towards the expenses of executing the Act. (S. 8, Canal Boats Act, 1884.)

A district council, whose district includes a seaport, may, with the consent of the Board of Trade, make bye-laws for regulating seamen's lodgings.

These bye-laws must provide (a) for the licensing, inspection, and sanitary conditions of such lodgings; (b) for the due execution of the bye-laws; (c) for preventing persons who are not licensed from holding themselves out as keeping licensed lodgings; (d) for the exclusion from such lodgings of improper characters; and (e) fines not exceeding 50%. must be imposed for breach of the bye-laws.

In districts where, by Order in Council, nobody but licensed persons may keep seamen's lodgings, a person contravening the Order is liable to a 100% fine.

The district council can defray any expenses incurred by them in carrying out their powers under this section out of any funds at their disposal. The fines recovered for contravention of the section, or for a breach of any bye-laws made in pursuance of it, are payable to the council. (S. 214, Merchant Shipping Act, 1894.)

The L. G. B. may empower a district council to make bye-laws in respect of lodging-houses other than common lodging-houses in the district. These bye-laws may be made for— (1) fixing the number of lodgers; (2) for the registration of houses occupied as lodgings; (3) for their inspection; (4) for enforcing proper drainage, privy accommodation and cleanliness; (5) for their being cleaned and whitewashed at stated intervals, and for the paving of courtyards attached to them; and (6) for the notification of cases of infectious disease. (S. 90, P. H. Act, 1875.)

The district council can make bye-laws for securing the decent accommodation of hop-pickers (s. 314, P. H. Act, 1875), and also of persons engaged in picking fruit or vegetables. (P. H. (Fruit Pickers' Lodgings) Act, 1882.)

COMMON LODGING-HOUSES.

A "common lodging-house" was defined by Lord Cockburn and Vice-Chancellor Page-Wood, when they were the Law

Officers, to be that class of lodging-house in which persons of the poorer class are received for short periods, and, although strangers to one another, are allowed to inhabit one room common to all. This definition was approved of in *Logsdon v. Booth*, (1900) 1 Q. B. 401; 69 L. J. Q. B. 131; in which case a Salvation Army shelter, where persons of the most wretched class could get a bed and could use a common living room, was held to be a "common lodging-house."

Where only part of a house is used as a common lodging-house, that part is to be deemed to be a common lodging-house for the purposes of the P. H. Act. (S. 89, P. H. Act, 1875.)

The district council must keep a register of the common lodging-houses in their district, and of the keepers of these houses. (S. 76, P. H. Act, 1875.) No person must keep a common lodging-house until he and it are registered; but when a registered keeper dies, his widow, or any member of his family may continue to keep it for four weeks without being registered. (S. 77.) There is a penalty of 5*l.* and a daily penalty of 40*s.* for receiving lodgers into a common lodging-house without being registered. (S. 86, P. H. Act, 1875.)

A common lodging-house must not be registered until it has been inspected and approved of by an officer of the council; *and the council may refuse to register a person as a common lodging-house keeper unless he (or she) produces a certificate of character, in the form required by the council, and signed by three inhabitant ratepayers (who are rated for the poor rate on property of the annual rateable value of at least 6*l.*) of the parish in which the house is situated.* (S. 78, P. H. Act, 1875.)

N.B.—The portion of the above provision in italics does not apply to districts in which Part V., P. H. Act, 1907, is in force. (S. 75, P. H. Act, 1907.)

The council cannot be compelled to register a person as a common lodging-house keeper. (*Ex parte Kavanagh* (1894), 10 T. L. R. 533.)

When a council had passed a resolution that a person should be registered, it was held that they could not withdraw it. (*Coles v. Fibbens* (1884), 52 L. T. 358.)

The council cannot remove a person's name from the register unless he becomes disqualified for being a lodging-house keeper

as provided by s. 88, P. H. Act, 1875, *infra*. (*Blake v. Kelly* (1887), 52 J. P. 263.)

In districts where Part V., P. H. Act, 1907, is in force, the council are expressly given a discretion as to the registration of lodging-house keepers, and they may refuse to register any person unless they are satisfied of his character and of his fitness for the position. (S. 69, sub-s. 1, P. H. Act, 1907.)

A person newly registered after s. 69 of Part V. of this Act comes into force in the district, may be registered for such time, not exceeding one year, as the council fix, and his registration may be renewed by the council from time to time. (S. 69, sub-s. 2, P. H. Act, 1907.)

The council can register one or more persons submitted to them by a common lodging-house keeper, and approved by them for the purpose, as deputy lodging-house keepers. The council must keep a register for this purpose.

If the council are at any time of opinion that a person registered as a deputy lodging-house keeper is not fit for the purpose, they may cancel the registration. (S. 71, P. H. Act, 1907.)

N.B.—The provisions of Part V. of the 1907 Act are only in force in districts to which the Part has been applied by L. G. B. Order (s. 2), and before this Part comes into operation in the district, the council must give at least one month's notice of the fact to the keeper of every common lodging-house in the district. (S. 75, sub-s. 1, P. H. Act, 1907.)

The keeper of a common lodging-house must, if so required by the council, fix a notice outside the house, in some conspicuous place, that it is a registered common lodging-house. If he fails to put up this notice, or to renew it, after written notice from the council to do so, he is liable to a penalty of 5*l.*, and to a penalty of 10*s.* for each day after conviction that he makes default. (S. 79, P. H. Act, 1875.)

The district council must from time to time make bye-laws (to be approved by the L. G. B.) for (i.) fixing the number of lodgers and for the separation of the sexes; (ii.) promoting cleanliness and ventilation; (iii.) giving of notice and taking of precautions in case of infectious disease; and (iv.) for the

general well ordering of these lodging-houses. (S. 80, P. H. Act, 1875.)

The lodging-house keeper, or his registered deputy, must manage the house and exercise supervision over the persons using it, and he or his deputy must be and remain at the lodging-house between the hours of nine in the evening and six in the morning of the following day. Unless he shows that there was a reasonable excuse for non-compliance with this enactment, the keeper is liable for each offence against it to a penalty of 40s., and to a daily penalty of 20s. (S. 70, P. H. Act, 1907.)

N.B.—This section is only in force in districts to which it or Part V. of the Act has been applied by L. G. B. Order.

In districts where Part V. of the 1907 Act is in force, every common lodging-house, whether registered before or after this Part came into operation, must be provided—

- (a) With sufficient and suitable sanitary conveniences, having regard to the number of persons who may be received in the house, and also, where lodgers of both sexes are received, with proper separate accommodation for the sexes; and
- (b) With a water supply laid on sufficient for flushing any water-closets or urinals used in the house.

If these requirements are not fulfilled, the council can give written notice to the keeper of the house to remedy the default; and if within twenty-eight days after receiving this notice the default is not remedied to the satisfaction of the council, the council can do the work and recover the expenses in a summary manner from the keeper, or declare them to be private improvement expenses. (S. 74, P. H. Act, 1907.)

N.B.—This section is only in force when it or Part V. have been applied to a district by L. G. B. Order.

If it appears to the council that a common lodging-house is without a proper water supply for the lodgers, and that such supply can be provided at a reasonable rate, the council may, by written notice, require the owner or the keeper of the house to obtain the supply within the time specified in the notice. Should he fail to comply with the requirements of this notice, the

council may remove the house from the register until the notice is complied with. (S. 81, P. H. Act, 1875.)

The keeper of a common lodging-house must limewash the walls and ceilings the first week in April and the first week in October every year to the council's satisfaction. There is a 40s. penalty for failure to do so. (S. 82, P. H. Act, 1875.)

The council can require the keepers of houses where vagrants are received to send a report of every person who resorted to the house on the preceding day or night. For this purpose the council must furnish the keeper with schedules to be filled up by him and sent by him to the council, or to such officers of the council as they may direct. (S. 83.) Failure to send a report when required entails a penalty of 5*l*. (S. 86, P. H. Act, 1875.)

A keeper of a common lodging-house must, when one of his lodgers is ill of an infectious disease, give immediate notice to the medical officer and to the relieving officer. (S. 84, P. H. Act, 1875.)

The penalty for not giving these notices is 5*l*. and a daily penalty of 40s. (s. 86, P. H. Act, 1875); but in districts where Part III. of the P. H. Act, 1890, is in force, the penalties are reduced to 40s. and 5s. respectively. (S. 32, P. H. Act, 1890.)

The keeper, and anyone else acting in the management of a common lodging-house, must at all times when requested by an officer of the council allow him to inspect the house. There is a penalty of 5*l*. for refusing such access. (S. 85, P. H. Act, 1875.)

If the keeper of a common lodging-house is convicted of a third offence against any of the foregoing provisions of the 1875 Act relating to common lodging-houses, the Court may adjudge that he shall not for a period of five years, or for a shorter period, keep a common lodging-house without the previous written licence of the district council, who may withhold it or grant it subject to such conditions as they think fit. (S. 88, P. H. Act, 1875.) This section is repealed so far as the particular district in which Part V. of the P. H. Act, 1907, is in force is concerned (s. 75, sub-s. 2, P. H. Act, 1907), but s. 72 of the 1907 Act makes this strict provision: Where the keeper of a common lodging-house is convicted of any offence against any provision of the P. H. Acts or of the P. H. Act,

1907, relating to common lodging-houses, or against the provision of any bye-law made under those Acts, the Court may cancel his registration as a common lodging-house keeper. (S. 72, P. H. Act, 1907.) Moreover, a person registered under the 1907 Act (or not registered at all) is liable to the penalties imposed by s. 86 of the P. H. Act, 1875 (see p. 193) for the offences specified therein. (S. 73, P. H. Act, 1907.)

HOUSING OF THE WORKING CLASSES.

The Housing of the Working Classes Act, 1890, as amended by the Housing of the Working Classes Acts of 1900 and 1903, empowers district councils not only to replace areas and buildings which are unhealthy, but also to embark on a scheme for providing their districts with lodgings suitable for the accommodation of people belonging to the working class.

The 1890 Act, the principal Act, is divided into parts. Part I. relates to unhealthy areas; Part II. to unhealthy dwelling-houses; Part III. to the provision of working-class lodging-houses; and other Parts dealing with a variety of matters relating to Parts I., II. and III.

PART I.—UNHEALTHY AREAS.

Part I. does not apply to rural districts. (S. 3, H. W. C. Act, 1890.)

When an official representation is made to the council that within a certain area—

- (a) there are houses, courts, or alleys unfit for human habitation; or
- (b) that the narrowness of the houses or streets, or the lack of light or ventilation, or other sanitary defects, make them dangerous to the health of the neighbourhood—and the council are satisfied that the evils cannot be remedied effectually except by means of an improvement scheme, the council must pass a resolution to the effect that the area is an unhealthy area, and that an improvement scheme ought to be made in respect of it.

After passing such resolution the council must forthwith proceed to make a scheme. Any number of unhealthy areas

may be included in one improvement scheme. (S. 4, H. W. C. Act, 1890.)

N.B.—As to where an area is too small to be dealt with under Part I., see s. 39, Part II., of this Act.

An official representation is made to the council by their medical officer (s. 5), and it must be in writing. (S. 79.)

The Medical Officer of Health must make this official representation to the council when he himself sees cause for doing so; and when two justices of the peace, or twelve ratepayers, make complaint to him of the unhealthiness of an area, he must inspect it and make an official representation to the council stating the facts and the opinion he has formed as a result of his inspection. (S. 5, H. W. C. Act, 1890.)

If the Medical Officer of Health fails to make an official representation or reports to the council that, in his opinion, the area complained of is not an unhealthy area, any twelve ratepayers, not necessarily the twelve original complainants (s. 4, H. W. C. Act, 1903), may appeal to the L. G. B.; and on their giving security for costs, the L. G. B. can order an inquiry to be held. If the report on the inquiry is to the effect that the area is an unhealthy area, the L. G. B. must transmit the report to the council, and the council must then proceed as if it was an official representation. (S. 16, H. W. C. Act, 1890.)

In case of the illness or unavoidable absence of their medical officer, the council can, with the approval of the L. G. B., appoint a qualified medical practitioner to take his place for six months, or some less period. (S. 26, H. W. C. Act, 1890.)

When an official representation has been made to the council, and they fail to pass a resolution in favour of an improvement scheme, or they resolve not to proceed in the matter, they must send to the L. G. B. a copy of the official representation, together with their reasons for not acting upon it. The L. G. B. can then order an inquiry to be held and a report to be made. (S. 10.)

If on this report the L. G. B. is satisfied that an improvement scheme ought to be made, the Board can order the council to make it; and this order may be enforced by *mandamus*. But where the area is too small to be dealt with as an "unhealthy area," the L. G. B. can order the council to prepare a recon-

struction scheme under s. 39, Part II., H. W. C. Act, 1890. (S. 4, H. W. C. Act, 1903.)

The improvement scheme must be accompanied by maps, particulars and estimates, and

- (a) may exclude any part of the area concerning which the official representation has been made, or include any neighbouring lands, if the council consider that such exclusion or inclusion is necessary for making their scheme efficient for sanitary purposes; and
- (b) may provide for widening existing approaches to the unhealthy area, or otherwise for opening it out for the purposes of ventilation or health; and
- (c) must provide dwelling accommodation for the working classes displaced by the scheme, if necessary; and
- (d) must provide for proper sanitary arrangements. (S. 6, sub-s. 1.)

A scheme must provide, if the L. G. B. after an inquiry so requires, for the suitable accommodation of the persons of the working class who are displaced by the scheme. (S. 11.)

The scheme must distinguish the lands proposed to be taken compulsorily. (S. 6, sub-s. 2.)

It may also provide for the scheme or any part of it being carried out by the freeholder of the property comprised in the scheme, or, with the concurrence of such person, under the superintendence and control of the council, and on such terms (to be embodied in the scheme) as may be agreed upon between them. (S. 6, sub-s. 3.)

Not less than thirteen weeks before taking any fifteen or more dwelling-houses occupied by such persons for the purpose of the scheme, the council must give notice of their intention to take the houses, by means of placards placed in conspicuous places near the houses, and before taking the houses the council must get a certificate from a justice that he is satisfied that this requirement has been complied with. (S. 15.)

Further, when a council have acquired the power to take, for the purposes of the Housing Acts, workmen's dwellings which are occupied by thirty or more such persons, the council must not enter into possession of these dwellings until the L. G. B. has either approved of a housing scheme for the benefit of these

people, or has decided that no such arrangement is necessary. (S. 3, H. W. C. Act, 1903.) The L. G. B. can require that the council first erect dwellings for the persons to be displaced by the scheme before the scheme is carried into execution. (Schedule of H. W. C. Act, 1903.)

As to council's power to compensate a tenant of premises for his expense in moving from them, see s. 78, H. W. C. Act, 1890 (p. 217).

For the purpose of providing accommodation for persons of the working class who are displaced by an improvement scheme, the council may appropriate any suitable lands belonging to them, or they may purchase further lands, as may be convenient. (S. 23, H. W. C. Act, 1890.)

On the completion of a scheme the council must—

- (a) Advertise for three consecutive weeks in one and the same local newspaper the fact that a scheme has been made, the limits of the area comprised in it, and stating where a copy of the scheme may be seen;
- (b) During the thirty days next following the date of the last publication of the advertisement (s. 5, H. W. C. Act, 1903), serve a notice on every owner or reputed owner, lessee, and occupier of any lands proposed to be taken compulsorily, so far as these persons can be ascertained. The notice must state that the lands are proposed to be taken compulsorily for an improvement scheme. In the case of owners and lessees, the notice must require them to send an answer stating whether they do or do not dissent from the lands being taken.
- (c) The notice must be served—
 - (1) By personal delivery to the person required to be served, or to his agent, or if they cannot be found, by leaving it on the premises; or
 - (2) By leaving it at such person's usual or last known place of abode; or
 - (3) By post, addressed to such usual or last known place of abode.
- (d) One notice addressed to "the occupier" or "occupiers," without names, and left at a house, is a sufficient notice to its occupiers. (S. 7.)

A notice must be signed by the clerk or his deputy. (S. 86, H. W. C. Act, 1890.)

N.B.—Forms of advertisements and notices have been settled by the L. G. B.

Upon compliance with the foregoing requirements as to advertising and serving of notices, the council must present a petition to the L. G. B. for an order confirming the scheme. (S. 8, sub-s. 1, H. W. C. Act, 1890.)

This petition must be accompanied by a copy of the scheme, and must state the names of the owners and lessees who have dissented from their lands being taken, and must be supported by such evidence as the L. G. B. may from time to time require. (S. 8, sub-s. 2.)

The L. G. B. can then direct an inquiry to be held to ascertain the sufficiency of the scheme, and to hear any local objections. (S. 8, sub-s. 3.)

On receiving the report of this inquiry, the L. G. B. can make a Provisional Order (in some cases an absolute order, see s. 5, H. W. C. Act, 1903, *infra*) declaring the limits of the area comprised in the scheme, and authorising it to be carried out. (S. 8, sub-s. 4.)

The L. G. B. Order may contain modifications of the scheme; but no addition can be made by it to the lands proposed to be taken. Copies of the Order must be delivered by the council to all persons on whom the notices were required by s. 7, *supra*, to be served. But it is not necessary to send copies to tenants for a month or a less period. (S. 8, sub-s. 5.)

A Provisional Order must be confirmed by Act of Parliament, and the L. G. B. must obtain a confirming Act as soon as convenient. (S. 8, sub-s. 6, H. W. C. Act, 1890.)

A confirming Act is not necessary, and an L. G. B. Order under sub-s. 4, *supra*, need not be confirmed by Parliament (a) if lands are not proposed to be taken compulsorily; or (b) if, though land is proposed to be taken compulsorily, the L. G. B. is satisfied that copies of the draft Order have been delivered by the council as required by sub-s. 5, *supra*, and further that no owner of land proposed to be taken compulsorily has presented a petition against it to the L. G. B. within two months from the publication of the advertisements and service

of notices required by s. 7, *supra*. (S. 5, H. W. C. Act, 1903.)

The L. G. B. has a discretion as to the costs to be paid by or to parties engaged in obtaining or opposing an improvement scheme. (S. 8, sub-ss. 7 and 8, H. W. C. Act, 1890.)

Should an Order made under s. 8, sub-s. 4, *supra*, be petitioned against, the L. G. B. can, on the application of the council, make modifications in the scheme to meet the objections of the petitioner, and may withdraw the original Order and substitute one sanctioning the modified scheme.

The same procedure in respect of publication and serving of notices of their intention to proceed with the modified scheme must be followed by the council, as in the case of the original scheme.

No petition is to be received against the modified scheme except one which was presented against the original scheme, or one which is concerned solely with the modifications sanctioned by the new Order. (S. 6, H. W. C. Act, 1903.)

When a scheme has been authorised, the L. G. B., on being satisfied by the council that an improvement can be made in the details of the scheme, may permit a modification. But any part of the scheme respecting the provision of working class dwelling accommodation when so modified, must be such as might have been inserted in the original scheme.

If this modification requires a larger expenditure than that sanctioned by the original scheme, or the taking of any property otherwise than by agreement, or injuriously affects other property in a different manner to that proposed in the original scheme, without the consent of the owner and occupier, a Provisional Order is necessary for the modification. (S. 15, H. W. C. Act, 1890.)

When the confirming Act has been passed (see s. 8, sub-s. 6, *supra*), or an L. G. B. Order (see s. 5, H. W. C. Act, 1903) has been made, the council must take steps for purchasing the lands required and for putting the scheme into execution. (S. 12, sub-s. 1, H. W. C. Act, 1890.)

The council can acquire land for carrying out the authorised scheme either by agreement or compulsorily. The provisions of

Schedule II. of the Act (too long to be set out here) govern the taking of land compulsorily. (S. 20, H. W. C. Act, 1890.)

As to council's power to enter premises for the purpose of valuation, see s. 77 (p. 217).

The council may sell or lease any part of the area to a person on condition that he carries the improvement scheme into execution. They may bind him to build and maintain the buildings as prescribed in the grant or lease, and may provide for the lands reverting in the council, or for the council's re-entry on the lands, on a breach of such conditions. (S. 12, sub-s. 2.)

The council may engage, on terms to be agreed upon, any persons, society, or body of trustees to carry out the scheme. Without the approval of the L. G. B., the council must not undertake the rebuilding of any houses (see Schedule of H. W. C. Act, 1903, p. 200), or the execution of any part of the scheme, except that they may pull down and clear away buildings on the area, and lay out, sewer, and complete streets upon the site. Such streets become highways repairable by the inhabitants at large. (S. 12, sub-s. 3.)

In making a grant or lease of any part of the area, the council must impose suitable conditions as to the elevation, size, and design of the houses, the extent of accommodation to be afforded, and for ensuring proper sanitary arrangements. (S. 12, sub-s. 4.)

If the council do erect any dwellings in connection with the scheme, these dwellings must be sold within ten years after their completion unless the L. G. B. directs otherwise. (S. 12, sub-s. 5.)

The council may, whether they acquire the lands or not, contract with the person entitled to the first estate of freehold in the lands for the scheme to be carried into execution by him. (S. 12, sub-s. 6, H. W. C. Act, 1890.)

If within five years after the removal of any buildings on the land set apart by the confirming Act, or by the L. G. B. Order for workmen's dwellings, the council have failed to sell or lease the land for the purpose prescribed by the scheme, or have failed to make arrangements for the erection of workmen's dwellings, the L. G. B. can order the land to be sold and fix a

reserve price, and may make it a condition of the sale that the purchaser shall erect dwellings suitable for the working classes in accordance with plans to be approved by the district council. (S. 13, H. W. C. Act, 1890.)

When lands are taken compulsorily, the amount of compensation must be settled by arbitration. No additional allowance is to be made to the amount on account of the compulsory purchase of an area in respect of which an official representation has been made, or of land which, in the opinion of the arbitrator, has been included in the scheme as falling under the description of property which may constitute an unhealthy area. (S. 7, H. W. C. Act, 1903.) The arbitrator is not to include in the estimate of the amount of compensation any improvement of the property made after the publication of the improvement scheme by the council, unless the improvement was necessary for maintaining the property in a proper state of repair.

As bearing on the amount of compensation, evidence may be given (1) that the rental of the premises was enhanced by reason of their being used for illegal purposes (*e.g.*, as a brothel), or because they were overcrowded, or (2) that they are in a state of bad repair and that the sanitation is defective, or (3) that they are unfit for human habitation and cannot reasonably be made fit. (S. 21, H. W. C. Act, 1890.)

All rights of way and other easements will be extinguished, and the property in the soil, pipes, sewers and drains will pass to the council on completion of the purchase; but the council must compensate persons who sustain any loss thereby. (S. 22, H. W. C. Act, 1890.)

The receipts of a district council under Part I. of this Act, *i.e.*, the sums realized by the sale or lease of lands acquired in pursuance of the improvement scheme must be used to form a "Dwelling-house Improvement Fund," and the expenses of the scheme are to be defrayed out of this fund. The money required in the first instance to establish this fund or to make good deficiencies caused by excess of expenditure over receipts must be supplied out of the district rate (s. 24), or it may, with the consent of the L. G. B., be borrowed. (S. 25, H. W. C. Act, 1890.)

In settling their accounts of transactions under Part I., the

council must take care that, as far as possible, all expenditure will ultimately be defrayed out of the proceeds from the property dealt with by the council under Part I. Any profits must be applied to any of the purposes for which the local rate is for the time being applicable; but in case of doubt the L. G. B. can decide how money accruing from property acquired under the scheme shall be applied by the council. (S. 24, H. W. C. Act, 1890.)

The maximum period for which money can be borrowed for the purposes of the H. W. C. Acts is eighty years—the actual period for repayment being decided upon by the council with the sanction of the L. G. B. Money so borrowed is not to be reckoned as part of the council's debt for the purpose of the limitations contained in sub-ss. 2 and 3 of s. 234, P. H. Act, 1875, on the borrowing powers of district councils. (S. 1, H. W. C. Act, 1903.)

A L. G. B. circular, September 22nd, 1903, states that as a general rule the L. G. B. proposes to allow the full term of eighty years for repayment of a loan for the purchase of freehold land, and sixty years when the money is borrowed for the erection of buildings.

PART II.—UNHEALTHY DWELLING-HOUSES.

“ Dwelling-house ” means any inhabited building, and includes any yard, garden, outhouses belonging to it, and the site of the dwelling-house. (S. 29, H. W. C. Act, 1890.)

The medical officer must represent to the council any dwelling-house which appears to him to be in a state so dangerous or injurious to health as to be unfit for human habitation. (S. 30.) If he receives a complaint in writing of a dwelling-house from four or more householders, he must inspect the house, and send to the council the complaint and his report upon it. If within three months after receiving the complaint and the medical officer's report the council neglect to take any steps under Part II. of this Act, the householders who signed the complaint can petition the L. G. B. for an inquiry. (S. 31, H. W. C. Act, 1890.)

The council must ascertain from time to time if there are any unhealthy dwelling-houses in the district. If any house appears

to them to be in such condition, the council must forthwith take proceedings, as under ss. 91, 94, 95 and 97 of the P. H. Act, 1875 (see NUISANCES), against the owner or occupier for the closing of the house. (S. 32, sub-s. 1.)

These proceedings may be taken whether the house is occupied or not. (S. 32, sub-s. 2, H. W. C. Act, 1890.)

S. 29, with its definition of "dwelling-house," is not intended to negative the provisions of s. 32. It is not necessary that the premises should be inhabited; if they are *prima facie* dwelling-houses a closing order can be made. (*Robertson v. King*, (1901) 2 K. B. 265; 70 L. J. K. B. 630.)

Notice must first be served on the owner or occupier of the dwelling-house, as under s. 94, P. H. Act, 1875, requiring that person to make the premises fit for habitation.

This notice must be in the form of Form A. of the Fourth Schedule of the H. W. C. Act, 1890.

"Owner" includes lessees or mortgagees, except persons holding or entitled to the rents and profits of the premises for a term of years of which twenty-one years do not remain unexpired (s. 29, H. W. C. Act, 1890), *e.g.*, a "leaseholder who has only two years of his lease to run is not an "owner." (*Osborne v. Skinners' Co.* (1891), 60 L. J. M. C. 156.)

As to the right of a superior landlord to be served with notices under Part II., see s. 47, p. 208.

When, however, the council are of opinion that a house cannot be made reasonably fit for human habitation, or that occupation of it ought to cease immediately, they need not serve a notice, and a justice may issue a summons for a closing order and make a closing order. (S. 8, H. W. C. Act, 1903.)

Forms of summons for a closing order and forms of closing orders have been prescribed by a L. G. B. Order of 1905.

When a closing order has been made, the council must serve a notice of the order on every occupying tenant of the dwelling-house, and these people must, within the time (not being less than seven days) specified in the order, quit the house. There is a 20s. daily penalty for not doing so (s. 32, sub-s. 3, H. W. C. Act, 1890), and in addition, the council, in case of disobedience to the order, can recover possession of the premises from the occupying tenant under ss. 138—145, County Courts Act, 1888,

and can recover the expense incurred in an action for debt from the owner of the premises. (S. 10, H. W. C. Act, 1903.)

N.B.—No allowance can be paid by the council to a tenant of a house which has been closed by a closing order for his expenses of moving from the house. (See s. 78, H. W. C. Act, Part IV., *post.*)

When a closing order has been made by a justice and has not been determined by a subsequent order, if the council consider that the house has not been rendered fit for habitation, and that the necessary steps are not being taken to make it so fit with all due diligence, and that its continuance is dangerous or injurious to the public health, they must pass a resolution that it is expedient to order the demolition of the building. (S. 33, sub-s. 1, H. W. C. Act, 1890.)

Notice of this resolution must be served on the owner, stating the time (not less than a month after the notice is served) and the place where the council will further consider the matter, when the owner is to be at liberty to attend and state his objections to the demolition of the building. (S. 33, sub-s. 2.)

Upon this further consideration, and after hearing the owner's objections, the council may order the demolition of the house unless the owner undertakes forthwith to do what is required to make it fit for habitation (s. 33, sub-s. 3); and the council can direct the work to be done in a reasonable and specified time. If the work is not completed in the time specified, or in any extended period allowed by the council or by a Court of summary jurisdiction, the council must order the house to be demolished. (S. 33, sub-s. 4, H. W. C. Act, 1890.)

With regard to the service of notices on owners under Part II. of this Act, a notice is to be deemed to be served on an owner if it is sent by post in a registered letter to him or to his agent at his usual or last known residence or place of business. (S. 13, H. W. C. Act, 1903.)

But where the owner or his place of residence or of business cannot be found, the council can serve a notice on him by leaving it addressed to the "owner" (s. 50, H. W. C. Act, 1890) with some occupier of the dwelling-house, or, if there is no occupier, by putting it on some conspicuous part of the house. (S. 49, H. W. C. Act, 1890.)

A superior landlord (*e.g.*, a mortgagor) who is not in receipt of the rents and profits of the premises is entitled, on giving notice of his ownership to the council, to be served with notice by them of any proceedings they may take with regard to the premises under Part II. He may also apply to a Court of summary jurisdiction in the event of his interests being prejudiced by any default in the execution of works, and the Court may allow him to do the necessary work himself, or to demolish the building or to retain the site, as the case may be. (S. 47, H. W. C. Act, 1890.)

When the demolition order has been made, the owner must, within three months after service of notice of the order on him, demolish the house. If he makes default, the council can do so and sell the materials in order to defray their expenses, handing over any surplus to the owner. (S. 34, sub-s. 1, H. W. C. Act, 1890.) Should the amount realized by the sale of the materials not be sufficient to cover expenses, the council can recover the deficiency from the owner as a civil debt or as private improvement expenses under the P. H. Act, 1875. (S. 9, H. W. C. Act, 1903.)

No other house which will be a nuisance must be erected on the site of the demolished one; if such building is erected and is a nuisance, the council can take steps for removing it. (S. 34, sub-s. 2, H. W. C. Act, 1890.)

There is an appeal to Quarter Sessions from the council's demolition order. No work must be done nor any proceedings taken in pursuance of the order until the appeal has been determined. (S. 35, H. W. C. Act, 1890.)

When an owner has undertaken and completed the works necessary for making a dwelling-house fit for habitation, he can apply to the council for a charging order on the premises. He must produce the surveyor's certificate and the accounts and vouchers of his expenditure on the works; and if the council are satisfied that the work has been properly done, they must make an order (in the form of Form A., Fifth Schedule to the Act) charging on the dwelling-house an annuity to repay him his expenses. This annuity is to be a sum of 6% for every 100% of the amount expended by him. It is to begin from the date

of the charging order and is to be payable for thirty years. (S. 36, H. W. C. Act, 1890.)

N.B.—An effect of this provision is to enable an owner who may be a lessee of the premises, with more than twenty-one years of his lease to run, to recover expenses he has been compelled to incur in saving the premises from demolition.

If the medical officer finds that any building in the district, though not unfit for human habitation, is so situated that, by reason of its proximity to other buildings—

- (1) it prevents ventilation or otherwise conduces to make the other buildings unfit for habitation or injurious to health; or
- (2) it prevents proper measures from being carried into effect for remedying any nuisance or other evils complained of in connection with such buildings;

he must represent to the council the particulars concerning the obstructive building with his opinion that it should be pulled down. (S. 38, sub-s. 1, H. W. C. Act, 1890.)

A similar representation may be made by four or more inhabitant householders. (S. 38, sub-s. 2.)

On receiving any such representation, the council must have a report made on the circumstances of the building and the cost of pulling it down and acquiring the land. This report and the representation must then be considered; and if the council decide to proceed in the matter, they must serve a copy of the report and of the representation on the owner of the land on which the building stands, with notice of the time and place when the owner will be at liberty to attend and state his objections.

After hearing the owner the council must either make an order allowing his objections or direct the obstructive building to be pulled down.

The owner can appeal to Quarter Sessions against this order. (S. 38, sub-s. 3.)

When an order for the pulling down of the obstructive building has been made by the council, and there has been no appeal against it, or the appeal has failed or been abandoned, the council can purchase the land on which the building stands.

The provisions of the Lands Clauses Acts with respect to the taking of lands otherwise than by agreement are to apply.

The land may be purchased any time within one year from the date of the order for the pulling down, or, if it is appealed against, from the date of its confirmation. (Sect. 38, sub-s. 4.)

The owner may, within one month after notice to purchase, declare his wish to retain the site on which the building stands, and he can undertake to pull, or permit the council to pull, the building down. In such case the owner will retain the site and the council must pay him compensation for the pulling down of the building. (S. 38, sub-s. 5.) The amount of compensation is to be settled by arbitration. (S. 38, sub-s. 6.)

When the council purchase the land the owner cannot insist on his entire holding being taken when part only is proposed to be taken as obstructive, and when, in the opinion of the arbitrator to whom the question of disputed compensation is submitted, this part can be severed from the remainder of the building without material detriment to it. Compensation may be awarded in respect of the severance of this part proposed to be taken in addition to its value. (S. 38, sub-s. 7.)

If the arbitrator considers that the demolition of the obstructive building will add to the value of the buildings in its proximity, he must apportion so much of the compensation as may be equal to the increase in value of the other buildings amongst those other buildings. The amount so apportioned is to be deemed to be private improvement expenses incurred by the council, and for the purpose of raising this amount of compensation payable by them, the council can levy improvement rates on the occupiers of those buildings. (S. 38, sub-s. 8.)

If the owner retains the site he must not erect any other building upon it which will be obstructive. The council can deal with such building as under s. 34, sub-s. 2, p. 208. (S. 38, sub-s. 10.)

The council on purchasing the land must pull down the obstructive building and keep the site open, or so much of it as is necessary for the purpose of remedying the nuisance caused by the obstructive building. With the consent of the L. G. B., the council can sell any portion of the site not required for the purpose. (S. 38, sub-s. 11.)

The council may dedicate the land purchased by them as a highway or other public place. (S. 38, sub-s. 12, H. W. C. Act, 1890.)

When a demolition order has been made and the council (a) consider that it would be beneficial to the health of the inhabitants of the neighbouring houses if the area occupied by the building to be demolished was used for all or any of the following purposes—

- (i) dedicated as a highway or open space;
- (ii) appropriated for the erection of dwellings for the working classes;
- (iii) exchanged for other land more suitable for these dwellings; or

(b) if the council consider that owing to the closeness, bad arrangement, want of light and air, or any other sanitary defects, the demolition or rearrangement of the buildings (*i.e.*, those closed by a closing order) is necessary, and the area comprising these buildings is too small to be dealt with as an unhealthy area under Part I.—the council must pass a resolution to the above effect or effects, and must direct a scheme for the improvement of the area to be prepared. (S. 39, sub-s. 1, H. W. C. Act, 1890.)

The L. G. B. can compel a council to make a scheme under s. 39, if it thinks fit, when the council have failed to pass a resolution under s. 10, Part I., of the Act of 1890. (S. 4, H. W. C. Act, 1903.)

When the scheme has been prepared, notice of it must be given to the owners, lessees and occupiers of the buildings involved in it. (S. 39, sub-s. 2, H. W. C. Act, 1890.)

The council must then petition the L. G. B. for an order sanctioning the scheme. (S. 39, sub-s. 3.)

When the sanction is obtained the council may purchase the area comprised in the scheme by agreement, and in that case the L. G. B. order takes effect without confirmation. If the council and owners do not agree, the order must be published by the council in the London Gazette, and notice of it must be served on the owners of every part of the area. (S. 39, sub-s. 4.)

An owner may, within two months after publication of the order, petition the L. G. B. against it, and then the order

becomes provisional only until confirmed by Act of Parliament. (S. 39, sub-s. 5.) But if no such petition is presented or it is withdrawn, the L. G. B., if satisfied that the order has been duly published, must confirm the order. (S. 39, sub-s. 6.)

The order may incorporate the provisions of the Lands Clauses Acts relating to compulsory purchase, but the compensation, in case of difference, will be settled by arbitration as provided by this Act. (S. 39, sub-s. 7.)

The provisions contained in ss. 9, 12, 13 and 22 of Part I. (see *supra*, pp. 203, 204) apply with the necessary modifications to a reconstruction scheme made in pursuance of Part II. (S. 39, sub-s. 8.)

The scheme may be modified by the L. G. B. (s. 6, H. W. C. Act, 1903); and the L. G. B. can permit the council to modify it. But if the proposed modification entails an increased expenditure, or authorizes the taking of any property otherwise than by agreement, or injuriously affects property in a manner different from that proposed by the original scheme and without the consent of the owner or occupier, notice of the L. G. B.'s order authorizing the modification must be published and may be petitioned against in the same manner as the original order. (S. 38, sub-s. 9, H. W. C. Act, 1890.)

Neighbouring lands may be included in the scheme if the council think that their inclusion is necessary for making the scheme efficient. But in this case the arbitrator must give compensation on account of the compulsory purchase of such lands. (S. 7, H. W. C. Act, 1903.)

The scheme must provide for such dwelling accommodation for persons of the working class displaced by the scheme as the L. G. B. may require. (S. 40, H. W. C. Act, 1890.)

Compensation payable by the council in exercising any of the powers conferred by Part II. is to be settled by an arbitrator appointed by the L. G. B. In fixing this amount the arbitrator is to be guided by the considerations mentioned in s. 21, Part I.

On payment or tender by the council to the person entitled to receive compensation of the sum awarded, that person must convey his interest in the property to the council.

On the request of the council, the arbitrator must, from time to time make an award respecting a portion only of the disputed

cases before him. He may, on the request of a claimant, certify the amount of costs properly incurred by him in relation to the arbitration, and the amount so certified must be paid by the council. This amount must be paid within seven days, or the council may be sued for it. But the arbitrator must not give such certificate if the amount is equal to or less than the amount offered by the council before the appointment of an arbitrator, nor if he considers that the claimant after receiving the council's notice neglected to send them particulars of his claim so as to enable them to make an offer. (S. 41, H. W. C. Act, 1890.)

Expenses incurred under Part II. of the H. W. C. Act, 1890, by a district council are to be defrayed in the same manner as expenses incurred under Part I. (see s. 24, *supra*); but the expenses incurred by a rural district council, other than expenses incurred in proceedings for obtaining a closing order, must be charged as special expenses on the contributory place in respect of which they were incurred. (S. 42, H. W. C. Act, 1890.) The council have similar borrowing powers to those given to them by s. 25, Part I., and by s. 1, H. W. C. Act, 1903. (S. 43, H. W. C. Act, 1890.)

A district council must present to the L. G. B. an annual account of all moneys received and paid, and of all work done by the council with a view to carrying into effect the purposes of Part II. (S. 44, H. W. C. Act, 1890.)

When a rural district council receive a representation or complaint from the medical officer or from any inhabitant householders, or if a complaint is made to the medical officer respecting—

- (a) any dwelling-house being unfit for human habitation; or
- (b) an obstructive building; or
- (c) a dwelling with regard to which a closing order has been made;

the district council must forward a copy of the complaint or representation to the County Council and furnish the County Council with such particulars as are required.

If the County Council consider that proceedings for a closing order ought to be instituted by the district council, or that a demolition order ought to be made, or that the building ought to be pulled down as an obstructive building, they must notify

the district council of that opinion. (S. 45, H. W. C. Act, 1890.)

If, after a month, the County Council consider that the district council have failed to take or to prosecute the proceedings recommended, the County Council can pass a resolution to that effect, and thereupon they can do what the district council ought to have done, and the County Council can recover from the district council all their expenses, including compensation paid, incurred in respect of the particular building. (S. 45, H. W. C. Act, 1890.)

A report by a county medical officer forwarded by the County Council to a district council is, for the purposes of Part II., to have the like effect as a representation from the medical officer of the district. (S. 52, H. W. C. Act, 1890.)

PART III.—WORKING CLASS LODGING-HOUSES.

Part III. can be adopted by an urban district council (s. 54, H. W. C. Act, 1890); and a rural district council, with the consent of the County Council, can adopt it either for the whole or for any contributory place of their district. (S. 2, H. W. C. Act, 1900.)

If a parish council resolve that the rural district council ought to have adopted or put Part III. into execution in the parish, the County Council, after inquiry, can transfer the district council's powers in the matter to themselves (as under s. 63, Local Government Act, 1894), put Part III. into execution, and recover their expenses from the district council. (S. 6, H. W. C. Act, 1900.)

"Working classes" include mechanics, artisans, and labourers working for wages, and hawkers, costermongers and others practising some trade or handicraft, whose earnings, in any case, do not exceed 25s. a week. (S. 12, H. W. C. Act, 1903.)

"Lodging-houses" are separate houses or cottages inhabited by persons of the working class, whether containing one or several tenements.

A cottage may include a garden of not more than half an acre, if the estimated annual value of the garden is not above 3l. (S. 53, H. W. C. Act, 1890.)

For the purpose of providing houses and cottages for lodging persons of the working class, the district council can purchase land for erecting these lodgings; when the land is taken compulsorily, ss. 176—178, P. H. Act, 1875, are to apply to the purchase of it. (S. 57, H. W. C. Act, 1890.) Any dispute as to the amount of compensation to be paid is to be settled by an arbitrator appointed by the L. G. B. (S. 7, H. W. C. Act, 1900.)

Or the council may purchase or lease such houses which are already in existence, or in course of erection, and an urban council, with the consent of the L. G. B., and a rural council, with the consent of the County Council, can appropriate houses thus acquired, and any other lands for the time being vested in or at the council's disposal, for working men's lodgings. (S. 57, H. W. C. Act, 1890.)

In every lease of a house which is to be occupied by working class lodgers, there is to be an implied condition that the house is at the commencement of the holding fit for human habitation. (S. 75, H. W. C. Act, 1890.)

Trustees of this class of dwelling can, if the majority consent, sell, lease, or make over the management of these dwellings to the council. (S. 58, H. W. C. Act, 1890.)

The council can erect lodging-houses on land acquired or appropriated by them for the purpose, and convert any buildings on the land into lodging-houses, and supply them with all necessary furniture and conveniences. (S. 59.)

An urban council, with the consent of the L. G. B., and a rural council, with the consent of the County Council, can, for this purpose, sell or exchange land vested in them for more suitable land. (S. 60, H. W. C. Act, 1890.)

An urban, but not a rural, council can establish or acquire lodging-houses outside their district (s. 1, H. W. C. Act, 1900), provided, of course, that Part III. has been adopted by the council.

Further, an urban council, with the consent of the L. G. B., and a rural council, with the consent of the County Council, can lease land acquired by them for the purposes of Part III. on condition that the lessee builds lodging-houses on it. (S. 5, H. W. C. Act, 1900.)

Ss. 61 and 62, H. W. C. Act, 1890, *infra*, do not apply to lodging-houses built by a lessee in pursuance of this section. (S. 5, H. W. C. Act, 1900.)

The general management of lodging-houses established or acquired by a district council under Part III. must be exercised by the council. The council may make reasonable charges for their occupation (s. 61, H. W. C. Act, 1890), and bye-laws for their regulation. (S. 62.)

A printed copy of these bye-laws must be put up in every room (s. 62), and they must be approved by the L. G. B. (S. 84.)

Bye-laws must be made in all cases except where a lodging-house is used as a separate dwelling (see also the exception made by s. 5, H. W. C. Act, 1900, *supra*) :—

- (i) For securing that the lodging-houses shall be under the management of the officials employed for that purpose by the council.
- (ii) For securing the proper separation of the sexes at night.
- (iii) For preventing damage, disturbance, indecency, and nuisances.
- (iv) For determining what the duties of the council's officials shall be. (S. 62.)

Fines for breach of bye-laws are to be paid to the credit of the fund from which the expenses are defrayed. (S. 71.)

A tenant or his wife who receives Poor Law relief, except any relief granted on account of an accident or illness, is disqualified for remaining an occupier of one of these dwellings. (S. 63, H. W. C. Act, 1890.)

If the council supply the district with gas or water, they may supply these lodging-houses free of charge or on favourable terms. (S. 69.)

These lodging-houses must at all times be open to the inspection of the council or their officers. (S. 70.)

If the lodging-houses, after being established for seven years, prove too expensive, or are found to be unnecessary, an urban council, with the consent of the L. G. B., and a rural council, with the consent of the County Council, may sell them. (S. 64, H. W. C. Act, 1890.)

A rural council's expenses will be defrayed as "special"

expenses, unless the County Council allow them to be defrayed as "general" expenses, to be paid by the contributory places for which Part III. has been adopted. (S. 65, H. W. C. Act, 1890.)

When land has been acquired under Part III. for re-housing persons displaced by schemes under Part I. or Part II., the council's accounts in respect of the land and houses erected on it may be made out as under Part I. or Part II., under whichever of the Parts the scheme had been carried out. (S. 4, H. W. C. Act, 1900.)

With the above exceptions, a district council's expenses under Part III. will be defrayed in the manner provided for the defraying of expenses incurred under Part I. or Part II.; and a council have the same powers of borrowing as under those two Parts. (Ss. 65 and 66, H. W. C. Act, 1890.)

PART IV.—(A.) PROVISIONS COMMON TO PARTS I. AND II.

Anyone authorised by the council, on giving twenty-four hours' notice in writing to the occupier, can enter premises which the council are authorised to purchase compulsorily in order to survey and value them. (S. 77, H. W. C. Act, 1890.) There is a penalty of 20*l.* for obstructing an officer of the council. (S. 89.)

When the council have purchased a building in pursuance of a scheme under Part I. or II., which has not been closed by a Closing Order, and which is occupied by a tenant whose contract of tenancy is for less than a year—if they require him to move in order that the building may be pulled down, the council can make him a reasonable allowance on account of the expense of moving. (S. 78.)

Everything that the medical officer may or must do can be done by the person appointed under s. 26 to act temporarily for him. (S. 79.)

A district councillor must not vote on any resolution or question arising in pursuance of Part I. or II. if it relates to any building or land in which he is beneficially interested. The penalty for so voting is a fine of 50*l.*; but the fact of his having voted will not invalidate the resolution, or the proceedings of the council in pursuance of the resolution (s. 88,

H. W. C. Act, 1890), nor will it disqualify him for remaining a member of the council, it coming within the exception of an interest in the sale or lease of lands. (S. 46, sub-s. 2, Local Government Act, 1894.)

(B.) PROVISIONS COMMON TO PARTS I., II., III.

Separate accounts must be kept by the council of their receipts and expenditure under each Part. These accounts must be audited with the council's other accounts. (S. 80, H. W. C. Act, 1890.)

The council can appoint a committee of members for any of the purposes of the Act. But this committee cannot be empowered to borrow, to levy a rate, or to enter into any contract. (S. 81.)

The proceeds of the sale of land acquired by a council under this Act must be applied to any purpose (including repayment of loans) for which capital money may be applied and of which the L. G. B. approves. (S. 82.)

All orders in writing (*e.g.*, a demolition order) made by the council must be under their seal and authenticated by the signature of the clerk or of his lawful deputy, and every notice required to be issued and served by the council must be similarly signed. (S. 86.)

Any notice (*e.g.*, a notice of appeal under s. 35) required to be served on the council may be served by delivering it to the clerk, or leaving it at his office or with some person employed there. (S. 87.)

The L. G. B. can cause an inquiry to be held when it thinks necessary in relation to any matter connected with the Act, and has a discretion as to the costs of the inquiry. (S. 85, H. W. C. Act, 1890.)

SMALL DWELLINGS ACQUISITION.

The Small Dwellings Acquisition Act, 1899, enables local authorities to assist, by advancing money, the resident in a small dwelling to acquire the ownership of it.

A dwelling in respect of which an advance can thus be made must not, in the opinion of the local authority, have a market value exceeding 400/.

The local authorities for the purpose of the Act are the County and County Borough Councils, and those district councils, urban and rural, who by resolution undertake to carry out the Act in their districts. Councils, however, of districts with a population under 10,000 must obtain the consent of the County Council. If the County Council refuse this consent, the district council can appeal to the L. G. B. (S. 9.)

The amount advanced by the council to a resident must not exceed four-fifths of the sum which, in the opinion of the council, represents the market value of the ownership; this sum must not exceed 240*l.* for a leasehold for an unexpired term of at least sixty years, or, in the case of a freehold interest or leasehold of not less than ninety-nine years unexpired at the date of purchase, 300*l.*

The money advanced must be repaid with interest, which must not be more than 10*s.* above the rate at which the council can borrow from the Public Works Loans Commissioners for the purpose of making the advance, within any period not exceeding thirty years, to be agreed upon between the council and the applicant. These repayments may be by instalments weekly or at any other periods not exceeding a half-year that may be agreed upon. But the proprietor (*i.e.*, the person to whom the advance has been made) on giving one month's notice to the council can pay off on any of the usual quarter days the whole of the outstanding loan or any part of it, being 10*l.* or a multiple of 10*l.* (S. 1.)

Before making an advance the council must be satisfied (a) that the applicant resides or intends to reside in the house, and is not already the proprietor of it [*N.B.*—To be a resident he must both occupy it and reside in it (s. 10, sub-s. 2)]; (b) that the value of the ownership is sufficient; (c) that the title is one which an ordinary mortgagee would accept; (d) that the house is in good repair and sanitary condition; and (e) that the repayment of the loan is secured by an instrument vesting the ownership in the council subject to the right of redemption by the applicant. (S. 2.)

The council must keep a book, open to inspection, showing the list of advances, a description of the houses, the amount advanced, the amount repaid, the names of the proprietors, and

such other particulars as the council think fit to enter in the book. (S. 8.)

A proprietor, who has thus acquired the ownership of a dwelling, must, until the advance and interest have been fully repaid, comply with the following statutory conditions :—

(i.) Every sum due for principal or interest must be punctually paid ; (ii.) he must reside in the dwelling ; (iii.) it must be kept insured against fire to the council's satisfaction, and the receipts for the premiums must be produced when required by them ; (iv.) it must be kept in good sanitary condition and repair ; (v.) must not be used for the sale of intoxicating liquors or in a way to be a nuisance to adjoining houses ; (vi.) an officer of the council, duly authorised in writing, can enter the house at all reasonable times to ascertain if the above conditions are being complied with. (S. 3.)

The statutory condition (*supra*) as to residence may be suspended by the council for any period not exceeding six months, and a proprietor may be permitted to let the house for a period of not more than four months in one year, or during his absence in the performance of any work or employment. And this condition may be suspended for twelve months from the death of the proprietor or until his representative has transferred the interest in it ; and it may be suspended during the continuance of any arrangement between the council and the trustee in bankruptcy of a proprietor. (S. 7.)

The proprietor may, with the council's permission, transfer his interest in the house, subject to the above-mentioned statutory conditions ; and with the same permission he may charge his interest in the house provided the council's rights are not affected thereby. (S. 3.) But until he transfers, the proprietor is personally liable for repayment of the advance. (S. 4.)

If the statutory condition as to residence is not complied with, the council may take possession of the house. If default is made in respect of any of the other conditions (whether the residence condition has or has not been complied with), the council may either take possession or order the sale of the house without taking possession. But before taking possession on any of the grounds, *other than non-payment of principal and interest*, the council must give written notice to the proprietor to comply

with the conditions; and (a) if within fourteen days he gives a written undertaking that he will comply with the notice, and (b) if he does so comply within two months, the council must not take possession or order the sale of the house.

In the case of bankruptcy of the proprietor, the council must take possession or order the sale of the house, unless they make some agreement to the contrary with the trustee in bankruptcy. (S. 3.)

Possession may be recovered as if the council were the landlord and the proprietor the tenant, either under the County Court Act, 1888, or the Small Tenements Recovery Act, 1838

When the council take possession they must pay the proprietor an agreed sum, or a sum equal to the value of the interest in the house after deducting from it the amount of the advance and any interest then unpaid and due. In the absence of a sale or of agreement this amount can be settled by a County Court judge. All expenses incidental to taking possession, or a sale, or legal proceedings incurred by the council must be deducted from the amount payable by them. (S. 5.)

But when the council order a sale of the house without taking possession, they must have it put up to auction. They can retain out of the proceeds of the sale any sum due on account of the advance and repay themselves all expenses incurred about the sale. Any balance is to be handed over to the proprietor. If, however, at the auction the house cannot be sold for a sum sufficient to recoup the council, they can take possession, and in this case need not pay anything to the proprietor. (S. 6.)

The council's expenses are to be defrayed as under the P. H. Act, 1875. Money may also be borrowed from the Public Works Loans Commissioners as for public health purposes; and these sums are not to be reckoned for the purpose of the limitation on borrowing by a district council contained in s. 234, P. H. Act, 1875. Separate accounts of receipts and expenditure must be kept.

If the expenses payable by a district council and not reimbursed by the receipts exceed in the local financial year a sum equal to a rate of 1*d.* in the £, the council must make no further advance for five years, or if, after that period has elapsed, the expenses still exceed the 1*d.* in the £ limit, then, not until they have fallen below that limit. (S. 9.)

Infectious Disease.

NOTIFICATION OF INFECTIOUS DISEASE.

The Infectious Disease (Notification) Act, 1889, was formerly an "adoptive" Act; but it is no longer so, and its provisions apply to every district. (Infectious Disease Notification Act, 1899.)

Notice must be given to the medical officer when a person in a dwelling-house, a hospital excepted, is suffering from an infectious disease.

This notice must be sent (a) by the head of the family or, in his default, by the relatives of the patient present, or, in default of them, by the person in charge of the patient, and in default of any such persons, by the occupier of the building in which the patient is, as soon as he is aware that the patient is suffering from an infectious disease; (b) the medical practitioner attending the patient must, as soon as he is aware that it is a case of infectious disease, send a certificate to the medical officer stating the name of the patient, where he is, and the nature of the disease.

There is a penalty of 40s. for failure to send this notice or certificate. (S. 3.)

These notices and certificates must be in writing or print. (S. 8.)

The form of certificate was prescribed by L. G. B. Order, 12th September, 1889.

The "occupier" is the person who has the charge or management of the building or rooms in which the patient is. In the case of a house let out as lodgings, or separate tenements, he is the person who receives the rent either on his own account or as an agent. In the case of a ship, he is the master or person in charge. (S. 16.)

The Act applies to every vessel, boat, tent, van, and shed used for human habitation, but it does not apply to foreign ships (s. 13), nor to buildings and ships belonging to the Crown. (S. 15, Notification Act, 1889.)

Every dairyman (for definition of a "dairyman" and "dairy," see *infra*, p. 239) supplying milk within the district

from premises either within or beyond the district, must notify to the medical officer all cases of infectious disease among persons engaged in or in connection with his dairy as soon as he becomes aware or has reason to suspect that such infectious disease exists. A dairyman who fails to comply with this section is liable to a penalty of 40s. (S. 54, P. H. Act, 1907.)

N.B.—This section is only in force in districts to which it or Part IV., P. H. Act, 1907, has been applied by L. G. B. Order.

The district council must supply medical practitioners in the district with certificates gratuitously, and must pay a doctor for each certificate sent in by him a fee of 2s. 6d. if the case occurs in his private practice, and 1s. if in his practice as medical officer of any public body or institution. (S. 4.) But a doctor, even if he is the council's Medical Officer of Health for the district, is entitled to a fee of 2s. 6d. for a certificate sent by him referring to a private patient. (S. 11, Notification Act, 1889.)

"Infectious diseases" include small-pox, cholera, diphtheria, membranous croup, erysipelas, scarlatina or scarlet fever, typhus, typhoid, enteric, and any other disease to which the district council extend the definition. (S. 6.)

Plague is an "infectious disease," of which notification must be made to the L. G. B. by medical officers to whose notice cases of it are brought. (L. G. B. Order, 19th September, 1900.)

A district council can include any other disease within the above definition by means of a resolution to that effect.

Fourteen days' notice must be given to the members before the meeting when the resolution is brought forward.

The resolution may be permanent or temporary in its operation; but if temporary, it must specify the period during which it is to be in force.

The order made by the council's resolution must be approved by the L. G. B., and it cannot be revoked or altered without the L. G. B.'s approval. When so approved the council must give notice of the order by publishing an advertisement of it in a local newspaper, and by means of posters, &c., and copies of it must be sent to every medical practitioner in the district. The order will come into force at such date, not earlier than a week from its first publication, as the council fix.

In case of emergency, however, instead of fourteen days' notice being necessary, three days' notice will suffice.

The resolution must declare the cause of the emergency, and must be for a temporary order, and a copy of it must be immediately sent to the L. G. B. and advertised. The order will come into force one week after the date of its advertisement, and will remain in force for a month, unless the L. G. B. extends the time or fixes an earlier date for it to cease to be in force. (S. 7.)

Local Acts containing similar provisions to those in this Act are replaced by this Act. (S. 14, Infectious Disease Notification Act, 1889.)

PREVENTION OF THE SPREAD OF INFECTION.

The Infectious Disease Prevention Act, 1890, is an "adoptive" Act, and can be adopted by urban and rural councils. The whole or any section of the Act can be adopted. It will supersede any similar enactments contained in any local Act in force in the district; but it will be in addition to the provisions of the P. H. Act, 1875, except as regards s. 120, P. H. Act, 1875, which is repealed and replaced by s. 5 of the Prevention Act, 1890, when the latter is in force in the district.

The expenses incurred by district councils in carrying out the provisions of the 1890 Act are to be defrayed in urban districts from the general district fund, and in rural districts as "general" expenses. (S. 20.)

(i.) INFECTED THINGS.

On the certificate of the medical officer, or of a medical practitioner, that a house, or any articles in it, require disinfecting in order to check the spread of an infectious disease, the clerk of the council must give written notice to the owner or occupier, informing him that unless he intimates to the council within twenty-four hours his readiness to do the disinfecting to the medical officer's satisfaction, the council will disinfect at his expense.

Should the person served with this notice fail to give such intimation, or to carry out a satisfactory disinfecting, the council

must disinfect under the medical officer's supervision, and the expense can be recovered summarily from the defaulter.

But if, in the opinion of the council or their medical officer, a person is unable to effectually disinfect his premises (*e.g.*, on account of poverty), they need not serve him with the above notice, but, with his consent, can do the disinfecting at the council's expense. (S. 5, Prevention Act, 1890.)

N.B.—S. 120, P. H. Act, 1875, which contains very similar provisions, is replaced by the above enactment in districts where the Prevention Act, 1890, is in force.

S. 120 imposes a 10s. penalty for failure to comply with the notice.

"Medical officer," for the purpose of the 1890 Act, includes a person appointed to act temporarily. (S. 2, Prevention Act, 1890.)

For the purpose of carrying the above provisions of s. 5 into effect, an officer of the council appointed for that purpose can enter any premises between 10 a.m. and 6 p.m. on producing his written authority. (S. 17, Prevention Act, 1890.)

In districts in which s. 66 of Part IV., P. H. Act, 1907, is in force, the following provisions will apply:—

If the medical officer, or any other qualified medical practitioner, certifies that the cleansing or disinfection of a house or of any articles therein likely to retain infection, or that the destruction of those articles would tend to prevent or check any dangerous infectious disease, the council must serve a notice on the master of the house, or, where the house or particular part of it is unoccupied, on the owner.

N.B.—The "master" is the person in occupation of or having the charge, management or control of the house or that particular part referred to in the certificate. Where the house is wholly let out in separate tenements, or is a lodging-house wholly let to lodgers, the "master" is the person who receives the rent payable by the tenants or lodgers either on his own account or as agent of another person.

The notice must inform the master or owner (as the case may be) that the house or articles will be cleansed and disinfected or (as regards the articles) destroyed by the council unless he informs the council within twenty-four hours from the receipt

of the notice that he will cleanse and disinfect the house or articles, or destroy the articles to the satisfaction of the medical officer, or of some other qualified medical practitioner within a time fixed by the notice.

But if (a) within twenty-four hours from the receipt of the council's notice the person on whom it is served does not inform the council that he will cleanse and disinfect, &c.; or (b) having so informed the council he fails to carry out his undertaking; or (c) if the master or owner without any such notice being served on him gives his consent, then the cleansing, disinfection, &c. must be carried out by the council's officers under the superintendence of the medical officer and at the cost of the council.

For the purpose of carrying this section into effect the council's officers may enter on any premises by day, *i.e.*, between 6 a.m. and 9 p.m.

When the council have disinfected a house or articles under this provision, the council must pay compensation for any unnecessary damage; and when they have destroyed any article under this section, they must compensate the owner, who may recover the amount of compensation in a summary manner. (S. 66, P. H. Act, 1907.)

If the council are satisfied, on the certificate of their medical officer, that the purification or destruction of any article in a dwelling-house is, by reason of the filthy condition of the article, necessary to prevent injury or to remove or obviate risk of injury to the health of any person in the house, they can have the article purified or destroyed at the council's expense.

The council must compensate the owner of the article for any damage in consequence of their exercising this power if the condition of the article is not attributable to any act or default by him. (S. 56, P. H. Act, 1907.)

N.B.—This section is only in force when it or Part IV. has been applied to the district by L. G. B. Order.

The district council can order bedding, clothing or other articles which have been exposed to infection to be destroyed, and can compensate their owner. (S. 121, P. H. Act, 1875.)

In case of dispute as to the amount it must be settled by arbitration as provided by s. 180, P. H. Act, 1875 (see p. 16);

or if the amount claimed does not exceed 20*l.*, the amount payable may be ascertained by a Court of summary jurisdiction. (S. 308, P. H. Act, 1875.)

The medical officer, unless he has been generally or specially directed by the council, has no right to order infected articles to be destroyed. (*Garlick v. Knottingley U. D. C.* (1904), 2 L. G. R. 1345.) But in districts where the 1890 Prevention Act is in force, the council or their medical officer, if he is so empowered, can take a less drastic step with regard to infected articles. They can by notice in writing require the owner of infected bedding, &c. to hand it over to an officer of the council for removal in order that it may be disinfected.

Failure to comply with this notice entails a 10*l.* penalty.

The bedding, &c. must be disinfected by the council, who must return it to the owner free of charge, and must compensate him for any unnecessary damage caused to the articles.

The amount of compensation is recoverable in and, in case of dispute, must be settled by a Court of summary jurisdiction. (S. 6, Prevention Act, 1890.)

The district council can provide a place and the apparatus necessary for the purpose of disinfection. (S. 122, P. H. Act, 1875.)

The owner or driver of a public conveyance must immediately cause it to be disinfected after it has, to his knowledge, carried a person suffering from infectious disease; and there is a 5*l.* penalty if he neglects to do so. (S. 127, P. H. Act, 1875.)

An infectious disease patient who enters a public conveyance without previously notifying the owner or driver is liable to a penalty of 5*l.*, and to pay in addition any loss and expense caused to the owner from having to have the vehicle disinfected. (S. 126, P. H. Act, 1875.)

A public vehicle, other than a hearse, which has been used to carry the body of a person who has died from an infectious disease, must be immediately disinfected.

It is an offence against this Act to hire such conveyance without notifying the owner or driver that the person died of an infectious disease. (S. 11, Prevention Act, 1890.)

In districts where s. 64, P. H. Act, 1907, is in force, the following enactment applies: The owner or driver of a public

vehicle, as soon as it comes to his knowledge that an infectious disease patient has been conveyed in it, must give notice to the medical officer and must have the vehicle disinfected. If he fails to do so he is liable to a penalty of 5/. The owner or driver can recover in a summary manner from the patient, or from the person who placed the patient in the vehicle, a sum sufficient to cover any loss or expense incurred by him over such disinfection. But the council, when so requested by the owner or driver, must provide for the disinfection of the vehicle free of charge, except where the owner or driver conveyed a person knowing that he was suffering from an infectious disease. (S. 64, P. H. Act, 1907.)

A person, including an innkeeper, who knowingly lets a house or room which has been occupied by a person suffering from an infectious disease without having had the place and the things in it disinfected to the satisfaction of a qualified medical practitioner (as testified by a certificate signed by the medical practitioner) is liable to a 20/. penalty. (S. 128, P. H. Act, 1875.)

A person letting, or showing for the purpose of letting, a house or part of it, who knowingly makes a false answer to a question put by the person negotiating for the hire of it as to whether anyone suffering from an infectious disease is therein, or has been there within the previous six weeks, is liable to a penalty of 20/., or to a month's imprisonment with or without hard labour. (S. 128, P. H. Act, 1875.)

In districts where the Prevention Act, 1890, has been adopted, the following provision will be in force as regards tenants and lodgers: A person who ceases to occupy a house or room in which, within the previous six weeks, there has been a person suffering from infectious disease (i.) without first having it disinfected to the satisfaction (as testified by a certificate) of a qualified medical practitioner; or (ii.) without notifying the owner of the premises of the existence of the case of infectious disease; or (iii.) who makes a false answer to questions put by the owner or by a person negotiating for the hire of the house or room as to whether there has been any case of infectious disease there, is liable to a penalty of 10/. (S. 7, Prevention Act, 1890.)

N.B.—When the above section is in force in a district, the council must, on becoming aware that there is a case of infectious disease in a house, give notice to the occupier of the provisions of the section. (S. 14, Prevention Act, 1890.)

A person who gives, lends, sells, transmits, or exposes, without previous disinfection, any bedding, clothing, rags, or other things which have been exposed to infection, is liable to a penalty of 5*l*. But no proceedings are to be taken against persons transmitting, with proper precautions, any bedding or other things for the purpose of having them disinfected. (S. 126, P. H. Act, 1875.)

It is an offence (the penalty is 5*l*. and there is a daily penalty) to throw any infected matter, without previous disinfection, into an ashpit or a receptacle for rubbish. (S. 13, Prevention Act, 1890.)

N.B.—This section is only in force in districts where it has been adopted, and when it is in force the council must give notice of its provision to the occupier of any house on becoming aware that there is a case of infectious disease in the house. (S. 14, Prevention Act, 1890.)

In districts where ss. 55 and 59 of Part IV., P. H. Act, 1907, are in force, the following provisions will apply :—

A person must not take or send to a public washhouse or laundry any bedding, clothes, &c. which have been exposed to infection from any infectious disease, unless they have been disinfected by or to the satisfaction of the council, or their medical officer, or of a qualified medical practitioner, or unless they are sent to a laundry, with proper precautions, for the purpose of disinfection, with notice that they have been exposed to infection.

There is a 40*s*. penalty for contravention of this provision.

The council may, on the application of any person, pay the expenses of disinfecting any such bedding, &c. if the disinfection is carried out by or under the direction of the council. (S. 55, P. H. Act, 1907.)

A person must not return to a public or circulating library a book which he knows has been exposed to infection; but he must give notice to the council that the book has been so exposed, and the council must have the book disinfected and

returned to the library, or destroyed. If the book is destroyed the council must pay its value to the proprietor of the library.

A person must not permit any book taken from a public or circulating library, and which is under his control, to be used by a person whom he knows to be suffering from an infectious disease.

There is a penalty of 40s. for contravention of the provisions of this section. (S. 59, P. H. Act, 1907.)

(ii.) INFECTED PERSONS.

The council must from time to time provide, free of charge, temporary shelter or house accommodation, with any necessary attendants, for the members of any family in which an infectious disease has appeared, who have been compelled to leave their dwelling in order that it may be disinfected by the council. (S. 15, Prevention Act, 1890.)

The above provision only applies in districts where this 1890 Act has been adopted; but in districts where s. 61 of Part IV., P. H. Act, 1907, is in force, the council can exercise the powers of s. 15 of the Prevention Act, 1890, whether the Act has been adopted or not, and further, the council can provide temporary accommodation for persons leaving a house after an infectious disease has appeared therein.

For the purpose of providing temporary shelter or accommodation, the council can borrow money subject to the provisions of the P. H. Acts. (See p. 27.)

When the council have provided a temporary shelter or house accommodation, they may, on the appearance of any infectious disease in a house ("house" includes a tent, van, shed, or boat used for human habitation), and on the certificate of the medical officer, cause any person *who is not sick* and who consents to leave the house, or, in the case of a child, whose parent or guardian consents to his leaving the house, to be removed to the temporary shelter or house accommodation.

Similarly on the certificate of the medical officer, and on the order of two justices, the council can cause any such person who does not consent to leave the house to be removed to a temporary shelter. There is a 5l. penalty for disobeying or obstructing

the execution of the justices' order. In every case the removal must be at the council's cost. (S. 61, P. H. Act, 1907.)

The district council can provide a carriage for the conveyance of persons suffering from infectious disease, and can pay the expense of conveying a patient to a hospital or other place of destination. (S. 123, P. H. Act, 1875.)

When a person suffering from an infectious disease is without proper lodging, or is lodged in a room occupied by more than one family, or is on board a ship, the council can, on the certificate of a medical practitioner, and on an order of a justice of the peace, remove the patient to a hospital, provided the hospital consents to receive him.

It is not necessary to get a justice's order to remove a patient from a common lodging-house.

There is a penalty of 10*l.* for obstructing the execution or for disobeying an order. (S. 124, P. H. Act, 1875.)

This s. 124 is directed not only to the protection of the patient, but to protecting other persons from infection. (*Warwick v. Graham*, (1899) 2 Q. B. 191; 68 L. J. Q. B. 1001.) In that case a boy ill with scarlet fever was isolated in a room, but it was proved that there was danger of infection to the other members of the family who had to pass the door of the patient's room when entering or leaving the house. It was held that the justices ought to have made an order for the boy's removal to hospital.

Where s. 65 of Part IV., P. H. Act, 1907 is in force, s. 124, *supra*, will apply to all cases where persons suffering from an infectious disease in a house or premises where they cannot be effectually isolated. (S. 65, P. H. Act, 1907.)

The district council can make regulations (to be approved by the L. G. B.) for removing to and detaining in hospital an infectious disease patient who has been brought into the district by a ship or boat. (S. 125, P. H. Act, 1875.) Similarly, a person suffering from an infectious disease on board a canal boat may be removed to hospital, and the council may detain the boat for such time as is necessary for cleansing and disinfecting it. The removal must be at the expense of the council. (S. 4, Canal Boats Act, 1877.)

An officer authorised to do so by the council or by a justice

can enter a canal boat (s. 7, Canal Boats Act, 1877) or a tent or van (at any time between 6 a.m. and 9 p.m.) on showing his authority if he has reason to believe that there is a person suffering from an infectious disease within. (S. 9, Housing of Working Classes Act, 1885.)

A justice can order the detention in hospital of a person suffering from an infectious disease who would not on leaving hospital be provided with lodging or accommodation where proper precautions could be taken for preventing the spread of infection. This detention will be at the expense of the council. An officer of the council or of the hospital or a police inspector in the district can do all that is necessary to enforce the execution of the order. The justice can extend the period of detention fixed in the order as often as he may deem it necessary. (S. 12, Prevention Act, 1890.) There is a 5*l.* penalty for obstructing the execution of the justice's order. (S. 16.)

N.B.—The Prevention Act, 1890, is only in force in a district where it has been adopted by the council.

The council may provide nurses for attendance on patients suffering from infectious disease in the district who, owing to the want of accommodation at the hospital or danger of infection, cannot be removed to hospital, or where removal to hospital might endanger the patients' health. The council may charge a reasonable sum for the services of nurses provided by them. (S. 67, P. H. Act, 1907.)

N.B.—This section is only in force in districts to which it or Part IV. of the P. H. Act, 1907, has been applied by L. G. B. Order.

A person who—(i.) while suffering from any dangerous infectious disorder, exposes himself without proper precautions against spreading the disease, in a street, public place, shop, inn, or public conveyance; or (ii.) being in charge of a person suffering from a dangerous infectious disorder so exposes the sufferer, *or causes or permits such sufferer to be so exposed*, is liable to a penalty of 5*l.* (S. 126, P. H. Act, 1875.)

N.B.—The words in italics only form part of the section when s. 62 of Part IV., P. H. Act, 1907, is in force in the district. (S. 62, P. H. Act, 1907.)

A person suffering from an infectious disease who enters a

public conveyance without previously notifying to the owner, conductor or driver that he is so suffering is liable to the same penalty. (S. 126, P. H. Act, 1875.) But s. 63, P. H. Act, 1907, prohibits the conveyance of infected persons in public vehicles and prohibits infected persons from entering any such vehicles—the penalty for an offence against the section being 40s. (S. 63, P. H. Act, 1907.)

N.B.—S. 63 is only in force when it or Part IV., P. H. Act, 1907, has been applied to the district by L. G. B. Order.

A person who knows that he is suffering from an infectious disease must not carry on any trade or business unless he can do so without risk of spreading the disease. There is a 40s. penalty for an offence against this section. (S. 52, P. H. Act, 1907.)

A person knowing that he is suffering from an infectious disease must not take any book, or use or cause any book to be taken for his use, from a public or circulating library. There is a 40s. penalty for an offence against this section. (S. 59, P. H. Act, 1907.)

N.B.—The above two sections are only in force when they or Part IV., P. H. Act, 1907, have been applied to the district by L. G. B. Order.

A parent or person having charge of a child, which child is or has been suffering from an infectious disease or has been exposed to infection, must not, after receiving notice from the medical officer that the child is not to be sent to school, permit the child to attend school without having procured a certificate from the medical officer (the certificate is to be granted free of charge on application for it) that in his opinion the child may attend school without undue risk of communicating the disease to others. There is a 40s. penalty for an offence against this section. (S. 57, P. H. Act, 1907.)

When a scholar is suffering from an infectious disease in a school, the principal (*i.e.*, the person in charge of the school, or, if the school is divided into departments and there is no single head of the school, the head of a department) must, if required by the council, furnish them with a list of the names and addresses of the day scholars attending the school or any depart-

ment of it. There is a penalty of 40s. for non-compliance with the council's requirement.

The council must pay the principal for every list furnished by him the sum of 6*d.*, and, if the list contains not less than twenty-five names, a further sum of 6*d.* for every twenty-five names contained in the list. (S. 58, P. H. Act, 1907.)

N.B.—The above ss. 57 and 58 are only in force in districts to which they or Part IV., P. H. Act, 1907, have been applied by L. G. B. Order.

The body of a person who has died from infectious disease must not, without the consent of the medical officer or of a qualified medical practitioner, be retained for more than forty-eight hours elsewhere than in a mortuary or in a room not used at the time as a dwelling or sleeping-room. (S. 8, Prevention Act, 1890.) If the medical officer or a medical practitioner certifies that it is desirable, in order to prevent infection, that the corpse of a person who has died in hospital from an infectious disease should not be removed except for burial, it must not be removed except for burial or unless it is taken to a mortuary. The penalty for offending against this section is 10*l.* (S. 9, Prevention Act, 1890.)

A justice, on the certificate of a medical practitioner that the body of a person who has died from an infectious disease is retained in a room where persons live or sleep, or that it is in a state dangerous to the health of the inmates, can order its removal, at the council's expense, to a mortuary, and that it be buried within the time specified in the order. If the friends of the deceased do not bury the body within the time specified in the justice's order, the relieving officer must cause it to be buried at the expense of the poor rate, but he can recover the expense summarily from any person liable to pay for the burial. (S. 142, P. H. Act, 1875.)

An order for the removal of a corpse of an infectious disease patient can also be made by a justice on the application of the medical officer, if it has remained for more than forty-eight hours in a place used at the time as a dwelling or sleeping-room without the sanction of the medical officer or of a medical practitioner, or if it is likely to endanger the health of the inmates. (S. 10, Prevention Act, 1890.)

N.B.—The Prevention Act, 1890, is only in force in districts where the Act has been adopted. There is a penalty of 5*l.* for obstructing the execution of a justice's order under s. 142 or s. 10, *supra*.

A wake must not be held over the body of a person dying of an infectious disease. A person attending or permitting such wake to be held is liable to a penalty of 40*s.* (S. 68, P. H. Act, 1907.)

(iii.) L. G. B.'s POWERS WITH REGARD TO EPIDEMICS.

The L. G. B. can make regulations for the treatment of persons suffering from cholera and other epidemic diseases, and for preventing the spread of infection (s. 130, P. H. Act, 1875); and whenever England appears to be threatened by a formidable infectious disease the L. G. B. can make regulations for—(i.) the speedy interment of the dead; (ii.) a house-to-house visitation; (iii.) the provision of medical aid and accommodation, and generally for preventing the spread of the disease. (S. 134, P. H. Act, 1875.)

A person who wilfully neglects to carry out, or who obstructs the execution of regulations made by the L. G. B. in pursuance of s. 130 or s. 134, *supra*, is liable to a penalty of 100*l.*, and, in the case of a continuing offence, to a further penalty of 50*l.* a day. (S. 1, sub-s. 3, P. H. Act, 1896.)

The district council can borrow money for putting into force regulations made by the L. G. B. under s. 134. Money may be borrowed from the Public Works Loans Commissioners; and if the L. G. B. thinks it expedient for the prompt and effective execution of the regulations, the preliminary notice and public inquiry may be dispensed with. (S. 2, Epidemic Diseases Prevention Act, 1883.)

The L. G. B. Order relating to Cholera, Yellow Fever, and Plague, Nov. 9th, 1896, may be summarized as follows:—

The district council, on receiving notice from an officer of the Customs that he suspects a ship to be infected with cholera, &c., must send their medical officer, or a medical practitioner appointed for the purpose, to visit the ship.

By an amending Order of 25th December, 1902, a ship with

cholera, &c. on board must signal, as prescribed by the Order, when three miles from the coast.

If the medical officer is satisfied that the ship is infected, he must send a certificate to that effect to the council; and the ship must be detained at the moorings set apart for that purpose.

When a ship is certified to be infected, the medical officer must examine everybody on board; and he must certify to the council every case of cholera, &c., and every case of illness which he suspects to be cholera. (Art. 12.)

A person certified by the medical officer to be suffering from cholera must be removed, if his condition admit of it, to hospital or other suitable place, and detained there until the medical officer certifies that he is free from disease. If the patient cannot be removed from the ship, the ship must remain subject, for the purposes of the Order, to the control of the medical officer. (Art. 13.)

A person certified by the medical officer to be suffering from illness which he (the medical officer) suspects to be cholera, may be detained for two days, either on board ship or in a hospital to which he can be taken. (Art. 14.)

No person is to land from a ship with cholera on board until the Customs officer or medical officer has been on board (1902 Order), nor unless a person who has not been certified to be suffering from illness satisfies the medical officer as to his name, destination and address. These particulars must forthwith be sent by the medical officer to the clerk of the council, who must thereupon transmit them to the local authority of the person's place of destination.

Every such person, on arriving at a place other than the address given by him to the medical officer, must, within forty-eight hours of his landing, notify in writing his address to the medical officer or to the local authority of the district where he is. (Art. 15.)

If a cholera, &c. patient dies on board, the local authority or their medical officer can direct the master of the ship to take the body out to sea and sink it, or to hand it over to them for burial or cremation. (Art. 17.)

The master must disinfect the ship and articles on board under

the direction of the medical officer. The medical officer or the local authority can order him to disinfect and destroy infected bedding, clothes, &c. used by cholera patients; and if he fail to comply with this order within a reasonable time they can do the necessary work themselves. (Arts. 16, 18, 19.)

If a ship not certified to be infected with cases of cholera has come from a place infected with cholera, or has on board persons who are in a filthy or otherwise unwholesome condition—the medical officer may, if he think it desirable, give a certificate (in the form in the order, and in duplicate—one to the master and one to keep himself or to send to the local authority) that the persons on board should not be allowed to land unless they can satisfy him as to their names, destinations, and addresses. When this certificate has been given to the master, no person must land until he has satisfied the medical officer in the above manner. The same procedure must then be followed as under Article 15, *supra*. (Arts. 20, 21.)

The medical officer, if he has reason to believe that a ship is infected or has come from a place infected with cholera, &c., can order all bilge water or water ballast to be pumped out before she enters a dock or basin; but if this proceeding would endanger the safety of the ship, he can order all water tanks, &c. to be sealed up.

On the council providing a proper supply of water for drinking and cooking, the medical officer can order all casks and vessels containing water for these uses to be emptied and cleansed. (Art. 22.)

A district council can appoint one or more legally qualified medical practitioners to act in execution of this order, either in place of or to assist the medical officer, and can pay them a reasonable remuneration. (Art. 24.)

PRECAUTIONS AS TO THE MILK SUPPLY.

If the medical officer has evidence that a case of infectious disease in the district is attributable to milk, whether supplied from a dairy in or without the district, or that the consumption of milk from any dairy is likely to cause infectious disease in the district—the medical officer can, on getting an order from a justice who has jurisdiction in the place where the particular

dairy is situated, inspect the dairy. If accompanied by a veterinary surgeon, an inspection can be made of the cattle. (S. 4, Prevention Act, 1890.) The veterinary surgeon can be remunerated for his services: in rural districts his fees are payable as "general" expenses. (S. 20.)

If, as a result of this inspection, the medical officer is of opinion that infectious disease is caused by the consumption of milk from that dairy, he must report to the council, and any report made by the veterinary surgeon must be sent in with it, and the council must then give written notice to the dairyman to appear before them within twenty-four hours to show cause why he should not be ordered to cease to supply the district with milk.

If the dairyman fails to satisfy the council when so summoned before them, they can make an order prohibiting him from supplying their district with milk for such time as they think necessary. When such an order has been made the council must give notice of the facts to the councils of the district and of the county in which the dairy is situated, and also to the L. G. B. The order of prohibition must be immediately withdrawn on the dairyman satisfying the council or their medical officer that the milk supply has been changed or that the cause of infection has been removed.

A dairyman against whom this order of prohibition is made is not liable to any action for breach of contract.

A person who refuses to admit the medical officer to inspect a dairy, or who supplies milk to the district after the order has been made, is liable to a penalty of 5*l.* and a daily penalty of 40*s.* if the offence is a continuing one. Proceedings against a dairyman must be taken before justices having jurisdiction in the place where the dairy is. (S. 4, Prevention Act, 1890.)

N.B.—The above powers given to a council by s. 4 can only be exercised in districts where the Act has been adopted. It will also be noticed that, while the medical officer can inspect a dairy if he has some evidence that the milk from it is *likely to cause* infectious disease, it is only if he reports that infectious disease *is caused* by the milk that the council can stop the supply.

If the medical officer certifies to the council that any person

in the district is suffering from infectious disease, which the medical officer has reason to suspect is attributable to milk supplied within the district, the council may require the dairyman supplying the milk to furnish the medical officer (within a reasonable time fixed by the council) with a complete list of all farms, dairies, or places from which his supply of milk is or has been derived during the last six weeks. If the supply or any part of it is obtained through any other dairyman, the council can make a similar requisition upon that other dairyman.

The council must pay sixpence to the dairyman for every list supplied by him, and, if the list contains not less than twenty-five names, a further sum of sixpence for every twenty-five names. A dairyman who fails to comply with the council's requisition to supply a list is liable to a penalty of 5*l.* and a daily penalty of 40*s.* (S. 53, P. H. Act, 1907.)

N.B.—S. 53 is only in force in districts to which it or Part IV., P. H. Act, 1907, has been applied by L. G. B. Order. It is important to note, in reference to how far the council's powers under this section extend, the definitions of "dairy" and "dairyman" in the 1907 Act.

A "dairy" as defined by the Prevention Act, 1890, includes any farm, farmhouse, cowshed, milk store, milk shop, or other place from which milk is supplied, or in which milk is kept for the purposes of sale; and "dairyman" is defined to mean cow-keeper, purveyor of milk, or occupier of a dairy.

The expressions "dairy" and "dairyman" have the same meaning given to them by s. 13 (the interpretation section), P. H. Act, 1907, with this exception, that for the purposes of the 1907 Act the dairy must be, or must be occupied "within (unless otherwise expressed) the district of the local authority." That is to say, that while s. 54, P. H. Act, 1907, expressly requires a dairyman supplying milk within a district to notify to the medical officer of that district all cases of infectious disease among his servants engaged in his dairy from which the milk is supplied, whether the dairy is *within or outside* that particular district, the power of requiring a list given by s. 53 can only be exercised by the council in the case of a dairy within the district.

One effect of s. 53 will be to supply evidence to the medical

officer on which he can act under s. 4, Prevention Act, 1890, *supra*.

See further as to the district council's control over the milk supply of the district, MILK SUPPLY.

Legal Proceedings.

PROCEEDINGS BY THE COUNCIL.

All offences under the P. H. Acts, and the penalties, forfeitures, costs and expenses which are directed to be recovered in a summary manner, may be prosecuted and recovered before a Court of summary jurisdiction. (S. 251, P. H. Act, 1875.)

Offences and penalties under the P. H. Act, 1890, may be similarly prosecuted and recovered (s. 6, P. H. Act, 1890); more than one sum may be included in one information or summons under the 1890 or other P. H. Acts. (S. 8, P. H. Act, 1890.)

Proceedings may be instituted by the clerk or any other officer, or by a member generally or specially authorised by resolution of the council to do so. (S. 259, P. H. Act, 1875.)

Offences under the P. H. Act, 1907, or against any bye-law made under that Act, are recoverable in the same manner as provided above. (S. 6, P. H. Act, 1907.)

The complaint must be made or the information laid within six calendar months from the time when the matter of the complaint arose. (S. 11, Summary Jurisdiction Act, 1848.)

N.B.—S. 252, P. H. Act, which provided a similar time limit, has been repealed by the Summary Jurisdiction Act, 1884. In proceedings for recovery of a water rate levied by a district council, it was held that the matter of complaint arose when payment of the rate was demanded by the council. (*Elliott v. Russell*, (1902) 2 K. B. 748; 72 L. J. K. B. 15.)

Where the council are empowered by this Act to recover demands summarily, they may at their option, if the demand is under 50*l.*, recover it by an action of debt in the County Court. (S. 261, P. H. Act, 1875.)

A justice of the peace may act in cases arising under the

P. H. Act, even though he is a member of the district council instituting the proceedings. (S. 258, P. H. Act, 1875.)

A person wilfully damaging works or property belonging to a district council, where no other penalty has been provided by the Act, shall be liable to a penalty of 5*l*. (S. 307, P. H. Act, 1875.)

S. 253, P. H. Act, 1875, imposes restrictions on proceedings for the recovery of penalties under the P. H. Acts. According to Lord Bramwell's interpretation, proceedings can only be taken by the local authority, or by a party aggrieved, or by a person who has obtained the consent of the Attorney-General. (*Fletcher v. Hudson* (1880), 5 Ex. D. 287; 49 L. J. Ex. 793.)

A "party aggrieved" must be a person who has suffered some legal loss or injury by the act done in respect of which the penalty is given (*per* Lush, L. J., in *Robinson v. Currey* (1881), 7 Q. B. D. 465; 50 L. J. Q. B. 561); and a candidate at a municipal election was held to be a party aggrieved by the fabrication of a voting paper. (*Verdin v. Wray* (1877), 2 Q. B. D. 608; 46 L. J. M. C. 170.) But "a patriotic person (*e.g.*, in his capacity of ratepayer) who comes forward to sue, but who is only aggrieved as the whole public are, is not entitled to sue." (Maule, J., *Boyce v. Higgins* (1864), 23 L. J. C. P. 5.)

Where the application of a penalty is not otherwise provided for, half is to go to the informer and half to the district council; but if the council are the informer they are to receive the whole of the penalty, which must be carried by the treasurer to the account of the district fund. (S. 254, P. H. Act, 1875.)

All penalties under any Acts incorporated with this Act are to be similarly recovered and applied. (S. 316, P. H. Act, 1875.)

If a person assessed to any rate made under this Act by an urban council fails to pay it when due and for fourteen days after demand has been made in writing, or if a person quits, or is about to quit, premises in respect of which a rate is then due and refuses to pay it after written demand, he can be summoned. If he fails to appear, or if no sufficient cause is shown for non-payment, the Court can make an order for payment of the rate, and in default of compliance with the order, can by warrant

cause it to be levied by distress of the defaulter's goods. The costs of the levy may be included in the warrant. (S. 256, P. H. Act, 1875.) See *supra*, as to time limit.

N.B.—In rural districts, the precepts of the council to the overseers will be conclusive evidence of the amount which the overseers must levy, and for non-payment the council have a remedy against the overseers under s. 231.

Where an owner of premises is liable either under the P. H. Acts, or by agreement with the council, to repay the expenses incurred by the council in respect of those premises, these expenses can be recovered by the council, together with interest at the rate of 5 per cent. *per annum* from the date of service of the demand till payment.

This sum can be recovered from the person who was owner at the time when the works were completed.

Until payment, this sum will be a charge on the premises.

The time within which (*i.e.*, six months) summary proceedings may be taken by the council to recover expenses incurred by them in works of private improvement, is to be reckoned from the date of the service of notice of demand. †

When these expenses have been settled and apportioned by the surveyor as payable by an owner, the apportionment will be conclusive unless within three months from service of notice upon him by the council of the apportionment, the owner disputes it by notice in writing.

The council may, by order, declare any such expenses to be payable by annual instalments within a period not exceeding thirty years, with interest not exceeding 5 $\frac{1}{2}$ per cent. *per annum*, until the whole amount is paid. The council can recover an instalment and interest, or any part of them, in a summary manner from the owner or occupier for the time being when they fall due.

If an occupier is so called upon, he can deduct the amount he has paid from his rent in the same proportion as is allowed in the case of private improvement rates. (S. 257, P. H. Act, 1875.)

S. 107 of the P. H. Act, 1875, provides that if, in their opinion, summary proceedings for the abatement or prohibition of a nuisance would not afford an adequate remedy, the council

may take proceedings in a superior Court, either by an action for an injunction or by indictment. But in an action, unless the nuisance causes damage to the private property of the council, they must obtain the Attorney-General's fiat. (*Tottenham U. D. C. v. Williamson*, (1896) 2 Q. B. 353; 65 L. J. Q. B. 591.) The action will then be brought in the name of the Attorney-General, with the council as relators.

When a nuisance appears to the council to be caused by two or more persons, the council may institute proceedings against any one of them, or may include all or any of them in one proceeding. The proceedings can be carried on even though a person included in them dies. In any proceedings for nuisances, whenever it is necessary to refer to the owner or occupier of premises, it is sufficient to designate him "owner" or "occupier" without name or further description. (S. 255, P. H. Act, 1875.)

The district council are empowered by s. 26, sub-s. 4, Local Government Act, 1891, to take proceedings for preserving rights of way, rights of common, and for preventing unlawful encroachments on road-side wastes.

The three courses open to the council recommended in the L. G. B. Memorandum on the Act, in case of an unlawful obstruction or encroachment, are—(1) to direct its removal; (2) to indict the offender; or, (3) to bring an action against him in the name of the Attorney-General, for which the Attorney-General's fiat must be obtained.

But in this last case, if damage is done to the property of the council, they can sue alone. An action for trespass in throwing down a post which the local authority had put up to prevent a footpath from being used by wheeled traffic, was held to be an action for damages for interference with the council's property, to which it was not necessary to make the Attorney-General a party. (*Sheringham U. D. C. v. Holsey* (1904), 91 L. T. 225.)

PROCEEDINGS AGAINST THE COUNCIL.

District councils come within the protection given by the Public Authorities Protection Act, 1893.

No action or proceeding will lie against a district council for any act done by them or for any alleged neglect on their part in the execution of their statutory duties and powers, unless

proceedings are begun within six months next after the act or neglect complained of; or, in case of a continuance of injury or damage, within six months after it has ceased.

The six months' limit applies in an action under Lord Campbell's Act notwithstanding the twelve months' limit fixed by that Act (*Markey v. Tolcorth Joint Hospital Board*, (1900) 2 Q. B. 454; 69 L. J. Q. B. 738). The continuance of the injury or damage means the continuance of the act which caused the damage (*Carey v. Bermondsey Borough Council* (1903), 20 T. L. R. 2). In this case the plaintiff met with an accident causing her personal injuries, the effect of which continued for more than six months after the occasion on which they were caused. It was held that her action would not lie.

S. 264, P. H. Act, 1875, which required notice of action to be given to a local authority, has been repealed by this Act; but it benefits a council in another way. It provides that the council, when sued in an action for damages, can tender amends. If the plaintiff proceeds with his action after tender and does not recover more than the sum tendered, their council will get their costs from the time of making the tender. And the Court may give costs to the defendant council if of opinion that sufficient opportunity has not been given them for tendering amends.

The Act applies not only to acts done in pursuance of the P. H. Acts but where the council have acquired and are working tramways under the Tramways Act (*Parker v. L. C. C.*, (1904) 2 K. B. 501; 73 L. J. K. B. 561); or under an Order in pursuance of the Light Railways Act, 1896 (*Lyles v. South-end Corporation*, (1905) 2 K. B. 1; 74 L. J. K. B. 484); and where the local authority have by statute been constituted a harbour authority (*The Ydun*, (1899) P. 236; 68 L. J. P. 101); or are supplying electricity under a Provisional Order which has been duly confirmed. (*Ambler v. Bradford Corporation*, (1902) 2 Ch. 585; 71 L. J. Ch. 744.)

The Act does not, however, apply to an action against a district council for the price of goods sold and delivered and for work and labour done (*Milford Dock Co. v. Milford Haven U. D. C.* (1901), 65 J. P. 483), as an obligation to pay under a contract is not a statutory duty of the Council. Nor does it

apply to an action for damage from extraordinary traffic under the Highway and Locomotive Act, where the damage is caused by the carts of the contractors working for the local authority. (*Kent C. C. v. Folkestone Corporation*, (1905) 1 K. B. 620; 74 L. J. K. B. 352.) The Locomotives Act, 1893, fixes the time limit in which such an action can be brought. (See HIGHWAYS, p. 146.)

The district council, of course, are liable as employers under the Workmen's Compensation Acts, and also for injury caused to other persons by the negligence of their employes. The council will not be liable for the negligence of an independent contractor (as to what amount of control over contractor will make them liable, see *Penny v. Wimbledon U. D. C.*, HIGHWAYS, p. 144), or of that contractor's servant. (*Jones v. Mayor of Liverpool* (1885), 14 Q. B. D. 890; 54 L. J. Q. B. 345.) In this case the corporation hired from a contractor a driver and horse for one of their water carts. Beyond telling the driver what streets he was to water, the corporation exercised no other control over him—the man being paid by the contractor. In an action against the corporation for injuries caused by this driver's negligence, it was held that the corporation were not liable.

A district councillor or an officer of the council acting under the council's authority will not be personally liable for anything done by him or the council, or for any contract entered into by the council or by a Joint Board for the purposes of carrying out the P. H. Acts. Any expenses incurred by them in so acting are to be borne by the rates or district fund. But a member of a council will not be exempt from liability to be surcharged by the district auditor with the amount of a payment disallowed by the auditor which the member has authorized or joined in authorizing. (S. 265, P. H. Act, 1875.)

APPEALS.

A person who deems himself aggrieved by the decision of the district council in any case in which the council are empowered (a) to recover in a summary manner any expenses incurred by them or (b) to declare such expenses to be private improvement

expenses, may, within twenty-one days after notice of that decision, appeal to the L. G. B.

His appeal must take the form of a memorial to the L. G. B., stating the grounds of his complaint, and a copy of it (within the above period) must be delivered by him to the council.

The L. G. B.'s Order on this memorial will be conclusive.

The council, on receiving a copy of this memorial, must stay any proceedings that have been begun against him for the recovery of such expenses; and the L. G. B. has power by its order to direct the council to pay to him such sum as the Board thinks to be a just compensation for the loss, damage or grievance sustained by that person on account of proceedings having been taken against him. (S. 268, P. H. Act, 1875.)

A person who deems himself to be aggrieved by a rate made by the council or by an order, conviction or judgment by a Court of summary jurisdiction can appeal to Quarter Sessions. (S. 269, P. H. Act, 1875.)

There is also an appeal to Quarter Sessions given to a person who is aggrieved (a) by an order, judgment, determination or requirement of the district council; (b) by the withholding of any order, certificate, license, consent or approval which may be made, granted or given by the council; (c) by a conviction or order of a Court of summary jurisdiction under the P. H. Acts, 1890 or 1907, except where this last-mentioned Act expressly provides to the contrary. (S. 7, P. H. Acts, 1890 and 1907.)

But in cases where the council are empowered to recover expenses in a summary manner or to declare the expenses to be private improvement expenses, under either of these Acts, the person aggrieved can only appeal to the L. G. B. and not to Quarter Sessions. (S. 7, P. H. Acts, 1890 and 1907.)

In appeals against a rate the Court of Quarter Sessions have the same powers of amending or quashing the rate or assessment and of awarding costs between the parties as they have with respect to appeals against the poor rate.

Notice of appeal must be given within fourteen days from demand of payment.

Appeals, whether under the 1875 or other P. H. Acts, must be in accordance with the Summary Jurisdiction Acts by which the greater part of s. 269, P. H. Act, 1875, has been repealed.

Notice of appeal must be given within seven days of conviction, order, &c., complained of.

The decision of Quarter Sessions will be binding on all parties; but the Court may state the facts of the case specially for the determination of a superior Court. (S. 269, P. H. Act, 1875.)

A person who is dissatisfied with a conviction or a determination by a Court of summary jurisdiction as being erroneous in point of law can apply to the justices to state a case for the determination of the High Court. (Summary Jurisdiction Act, 1879.)

Under the Quarter Sessions Act, 1849, the parties may consent, and with the leave of a judge, after notice of appeal has been given, to a special case being stated for the consideration of the High Court.

MISCELLANEOUS.

The L. G. B. is empowered by s. 293 of the Act to hold those inquiries which are directed by the Act and by other Acts (*e.g.*, Housing of Working Classes Act, 1890, s. 85) to be made in certain specified instances. The Board is given a discretion in determining the parties by whom, or the rates out of which, the costs of the inquiry shall be borne. An order as to the costs can be made a rule of Court. (S. 294.) An order of the L. G. B. will be conclusive in respect of the matters to which it refers. (S. 295.) L. G. B. inspectors, for the purpose of the inquiry, have the power to summon witnesses, to require them to give evidence on oath, and can require the production of documents. (S. 296, P. H. Acts, 1875.)

The costs of a district council, as sanctioned by the L. G. B., incurred in promoting or opposing a Provisional Order, must be defrayed out of the district fund or rates; and the council, with the consent of the L. G. B., can borrow money for defraying such costs. (S. 298, P. H. Acts, 1875.)

Before a Provisional Order can be made by the L. G. B., public notice of the purport of the proposed order must be advertised by the council in two successive weeks in some local newspaper. The L. G. B. can, if necessary, hold an inquiry into the subject of the order. (S. 297, P. H. Act, 1875.)

N.B.—In some instances, *e.g.*, for providing electric lighting

or tramways, the council must get the Provisional Order from the Board of Trade.

NOTICES GIVEN BY COUNCIL.

Notices, orders, and other such documents which the council are required to give on the occasions specified must be in writing or print; and if they require authentication by the council, the signature by the clerk, or the surveyor, or inspector of nuisances is sufficient authentication. (S. 266, P. H. Act, 1875.)

Any notice required to be given to the owner or occupier of premises may be addressed by the description of the "owner" or "occupier" of the premises (naming the premises) without further name or description.

Notices, orders, &c. may be served by delivering them to or at the residence of the person to whom they are addressed; or where they are addressed to the "owner" or "occupier," by delivering them, or a true copy, to some person on the premises; or if there is no person on the premises who can be served, by fixing it on some conspicuous part of the premises.

A notice sent by post is to be deemed to have been served at the time when the letter containing it would be delivered in the ordinary course of post. In proving such service it will be sufficient to prove that the notice was properly addressed and put into the post. (S. 267, P. H. Act, 1875.)

Licenses and Registration.

LICENSES GRANTED BY COUNCIL.

S. 27, Local Government Act, 1894, transferred from justices to the district council the powers and duties of licensing gangmasters, game dealers, passage brokers and emigrant runners, knackers' yards, and of granting pawnbrokers' certificates, and of licensing the storage of petroleum.

S. 171, P. H. Act, 1875, incorporates the provisions of the Towns Police Clauses Acts, 1847 and 1889, relating to hackney carriages, and enables an urban district council to license hackney carriages and their drivers.

A gangmaster wishing to employ women or children in agricultural labour, not on land occupied by himself, must get

a license for the purpose from the district council. The license will be in force for six months, and the fee payable in respect of it is one shilling. (Agricultural Gangs Act, 1867.)

A game dealer's license is granted annually, and expires in July. (Game Act, 1831.)

A knacker's license continues in force for one year. (Knackers Act, 1844.) And see SLAUGHTER-HOUSES, p. 334.

A certificate for a pawnbroker's license must be taken out yearly. The applicant must give the requisite notices of his intention to apply. The application can only be refused on the grounds (1) that the applicant has failed to produce satisfactory evidence of good character; (2) that his shop, or any adjacent place owned or occupied by him, is frequented by persons of bad character; or (3) that he has not given the notices required by s. 42 of the Act. (Pawnbrokers Act, 1872.)

A passage broker is a person concerned in the sale or letting of steerage passages in a ship proceeding from the British Isles to any place out of Europe, not in the Mediterranean. He must enter into a bond to the Crown in the sum of 1,000*l*. The bond must be executed in duplicate; one part must be deposited with the emigration officer, and the other with the Board of Trade.

The license must be granted to the applicant on his proving that the bond has been made and deposited as required, and that he has given fourteen days' notice to the Board of Trade of his intention to apply for a license.

The council must send notice of the grant of the license to the Board of Trade.

An emigrant runner is a person who solicits or recommends an intending emigrant to any passage broker, shipmaster, lodging-house keeper, or dealer, for any purpose connected with preparation for a passage, or who gives, or pretends to give, information relating to emigration to an intending emigrant.

The license can only be granted to him on his own application, and on the written recommendation of the emigration officer, or of the chief constable, or head of police in the place where he proposes to carry on his business. The license will continue in force till 31st December. (Merchant Shipping Act, 1894.)

Petroleum must not be kept without the license of the district

council, except for private use or for sale, and then only if the following conditions are complied with: (1) that it is kept in separate vessels, securely stopped, each of which does not contain more than one pint; and (2) that the aggregate amount kept does not exceed three gallons.

A person licensed under the Petroleum Hawkers Act, 1881, may hawk, by himself, or by his servants, petroleum for sale.

A license must be signed by two or more councillors. It may be granted for a limited time, and subject to conditions for the safe keeping of petroleum as the council think proper.

A fee not exceeding 5s. may be charged for each license.

If the council refuse to grant a license, or the applicant is dissatisfied with the conditions attached to it by the council, he can require the council to give him a certificate of the grounds of their refusal, or of the conditions they have chosen to annex to its grant. He can then memorialize a Secretary of State, or the Lord-Lieutenant, who, after inquiry, can grant the license, with or without conditions.

An officer of the district council, on showing his authority, can require a dealer in petroleum to show him the vessels in which it is kept, and he can take samples for testing.

There is a penalty for obstructing an officer, and justices may grant him a search warrant if satisfied that petroleum is being kept on any premises in contravention of the Act. (Petroleum Acts, 1871 and 1879.)

An urban council may license the proprietors and men in charge of horses or donkeys standing for hire in the district in the same manner as in the case of hackney carriages. Byelaws may be made regulating the stands and fixing the rates of hire, and as to the qualifications of the persons in charge, and for securing their orderly conduct. (S. 172, P. H. Act, 1875.)

An urban district council can license hackney carriages to ply for hire in their district.

"Hackney carriage" includes an omnibus, char-à-banc, or any other vehicle plying or standing for hire to carry passengers at separate fares; but it does not include a vehicle starting from and previously hired by the particular passengers at a job-master's yard, if the vehicle is his *bonâ fide* property and does not ply for hire in the district; nor does it include a tram-car,

nor railway company's omnibus for taking passengers and their luggage to or from the railway station, nor an omnibus starting from outside the district and not plying for hire in the district.

The license of a proprietor of a hackney carriage must state his name and place of abode. It must not relate to more than one carriage. It must be under the council's seal, signed by two or more members, registered in a book kept for the purpose, and will be in force for a year or a less period if the council choose. A fee, not exceeding 5s., must be paid for this license.

A driver, which includes a "conductor," of a licensed hackney carriage must also get a license. It will remain in force until revoked for misconduct. The fee to be paid for this license is 1s. (S. 171, P. II. Act, 1875.)

A district council must exercise an unfettered discretion in dealing with applications for licenses. They cannot agree with some proprietors of carriages to grant licenses to them and to no others. (*R. v. Barry U. D. C.* (1900), 16 T. L. R. 565.)

See p. 65 for council's power to make bye-laws for regulating hackney carriages, horses and donkeys standing for hire; also see as to power to license drivers and conductors of tram-cars (p. 340).

The district council may grant licenses to persons whom they think fit to carry on the calling of a luggage porter, light porter, public messenger, or commissionaire, and may charge a fee of 1s. for such license.

The council can make bye-laws for regulating the conduct of persons so licensed.

The license may be granted for a year or less period, and may be suspended, revoked or endorsed by the council whenever they deem such action desirable in the interests of the public or for breach of such bye-laws. But this power of suspending, revoking, &c. must be plainly set forth in the license itself.

Every license, whensoever issued, is to expire on the 31st day of March next following the date of its issue.

The license may contain conditions as to the badge which the licensee shall wear.

If an unlicensed person represents himself as licensed, he is liable to a penalty of 20s. (S. 84, P. II. Act, 1907.)

N.B.—This section is only in force in districts to which it or

Part VII. of the P. H. Act, 1907, has been applied by order of a Secretary of State.

The bye-laws made under this section must be submitted to a Secretary of State for confirmation. (S. 9, P. H. Act, 1907.)

The district council may license pleasure boats and vessels to be let for hire, or used for carrying passengers for hire, and boatmen or persons assisting in the charge or navigation of such boats. These licenses may be granted on such terms and conditions as the council think fit, and the council can charge for such licenses, in respect of a boat, an annual fee not exceeding 5s., and in respect of a boatman a fee of 1s.

The license may be granted for such period as the council think fit, and it can be suspended or revoked, if the council think such a course desirable in the interests of the public; but the existence of this power to suspend or revoke the license must be plainly set forth in the license itself.

In districts where this section is in force, a person must not let for hire, or carry passengers in, a boat that is not licensed, nor during the suspension of the license.

A license under this section is not, however, required for any boat or vessel duly licensed by or under any regulation of the Board of Trade.

A person must not carry or permit to be carried in a pleasure boat a greater number of passengers for hire than is specified in the license. The owner, before permitting a pleasure boat to be used, must paint, in letters and figures not less than one inch in height and three-quarters of an inch in breadth, on a conspicuous part of the boat, his own name and the number of persons it is licensed to carry, in the form "Licensed to carry — persons."

There is a penalty of 40s. for contravening this section.

A person may appeal to a petty sessional Court against the withholding, suspension or revocation of a license by the council. The appeal cannot be made until after the expiration of two clear days after such withholding, suspension, &c., and the appellant must give twenty-four hours' notice in writing to the clerk of the council of such appeal and the ground of it. The Court can make such order as it thinks fit and can award costs,

which costs can be recovered summarily as a civil debt. (S. 94, P. H. Act, 1907.)

N.B.—This section is only in force in districts to which it or Part X., P. H. Act, 1907, has been applied by order of the L. G. B.

See p. 65 as to council's power to make bye-laws for regulating the use of pleasure boats.

REGISTRATION BY COUNCIL.

Every person who carries on, for the purpose of private gain, the business of keeper of a female domestic servants' registry, must register his (or her) name and place of abode, and also the premises where the business is carried on, in a book to be kept at the council's offices for the purpose.

The council can make bye-laws prescribing the books to be kept and the entries to be made therein, and any other matter which the council may deem necessary for the prevention of fraud or immorality in the conduct of such business.

The person registered must keep a copy of the bye-laws made by the council under this section hung up in a conspicuous place in the registered premises.

Any officer of the council, or other person duly authorized in writing by the council, must, on producing his authority, at all reasonable times be afforded full and free power of entry into the registered premises in order to inspect them and the books which the keeper of the business is required to keep.

A person carrying on the business unregistered or contravening the section, or any bye-law made under it, is liable to a penalty of 5*l.* and a daily penalty of 40*s.*, and the Court may order the suspension or cancellation of the registration. A person carrying on the business while the registration has been suspended is liable to the same penalties.

The council must give public notice of the provisions of this section by advertisement in two newspapers circulating in the district, and by handbills, &c. (S. 85, P. H. Act, 1907.)

N.B.—This section is only in force in districts to which it or Part VII. of the P. H. Act, 1907, has been applied by order of a Secretary of State. The bye-laws made under it must be

submitted for confirmation to a Secretary of State. (S. 9, P. H. Act, 1907.)

A person carrying on business as a dealer in old metal or as a marine store dealer must register his name, place of abode, every place of business, and every warehouse, store, and place of deposit occupied or used by him for the purpose of the business, in a book to be kept for the purpose at the offices of the district council.

A person carrying on such a business must correctly enter in a book to be kept by him for the purpose, the description and price of all articles purchased or otherwise acquired by him, and the name, address, and occupation of the person from whom he purchased or acquired the articles.

A person carrying on such business unregistered, or without keeping such book and making such entries, is liable to a penalty of 5*l.* and a daily penalty of 40*s.*

An officer of the council, or other person duly authorized in writing by the council, can at all reasonable times enter any such place of business, &c. to inspect it and the books required to be kept. There is a penalty of 5*l.* for obstructing or hindering an officer.

The council must give notice of the provisions of this section in the same manner as is required by s. 85, *supra*. (S. 86, P. H. Act, 1907.)

N.B.—This section is only in force in districts to which it or Part VII., P. H. Act, 1907, has been applied by order of a Secretary of State.

See p. 193 as to the registration of common lodging-house keepers, and p. 261 as to registration of purveyors of milk.

Lighting.

An urban council (and a rural council if so empowered by the L. G. B.) may contract with any person for the supply of gas, or other means of lighting the streets, markets, and public buildings in their district. The council may provide the necessary lamps, lamp-posts, and other apparatus.

If there is no company authorized by Act of Parliament supplying gas in their district or any part of it, the district

council can themselves undertake to supply gas. A district council must not compete with a gas company within the company's limits of supply.

For this purpose, the district council must obtain a Provisional Order of the L. G. B., to be confirmed by Parliament.

In applying for a Provisional Order the regulations of the L. G. B. made September 7th, 1891, under the Gas and Waterworks Facilities Acts, 1870 and 1873, must be observed. (S. 161, P. H. Act, 1875.)

Or the district council, with the sanction of the L. G. B., can purchase the undertaking of a gas company in the district, if the company is willing to sell, on such terms as may be agreed upon between them. (S. 162, P. H. Act, 1875.)

In rural districts the parish has the exclusive right of adopting the Lighting and Watching Act, 1833; but when any place in which the Lighting and Watching Act, 1833, has been adopted becomes included in an urban district, or if a rural district council are invested by L. G. B. Order with power to supply their district under s. 161, *supra*, the 1833 Act becomes superseded and all lamps, posts, pipes, fire-engines and hose, and other property vested in the parochial authority under that Act, vest in the district council. (S. 163, P. H. Act, 1875.)

A district council can apply to the Board of Trade for a license to supply electricity in their district for any public (*e.g.*, street lighting) or private purposes.

Or, again, they may proceed by Private Bill, or they may be authorized to supply electricity by Provisional Order of the Board of Trade. This order must be confirmed by Act of Parliament before it becomes of any effect. (Electric Lighting Acts, 1882 and 1899.)

The district council in whose area an electric lighting company has been established by a Provisional Order or by special Act can purchase the undertaking after the expiration of forty-two years, or after such other or shorter periods as are specified in the Provisional Order or special Act.

The council have compulsory powers of purchase. They must pay the then value of the undertaking, including the lands, buildings, and plant. In case of disagreement as to the amount, it must be settled by arbitration. In determining the amount

payable no calculation is to be made for good-will, or on account of the sale being compulsory, or for any prospective profits.

The Board of Trade may fix the date from which the purchase is to take effect, and may determine various questions arising out of the purchase of the undertaking. (Electric Lighting Act, 1888.)

A district council are given powers by s. 150, P. H. Act, 1875, and by s. 6, Private Street Works Act, 1892, for ensuring that private streets in their district shall be lighted to their satisfaction.

S. 161, P. H. Act, 1875, enables an urban council to light the roads in the district, and the district council, or, in a rural district where the 1833 Lighting Act has been adopted, the parish council are the authority, and not the County Council, for lighting the main roads. (S. 11, sub-s. 11, L. G. Act, 1888.)

Markets and Fairs.

An urban district council can establish a market in their district if a resolution in favour of it is passed at a meeting of the ratepayers and owners of the district. (S. 166, P. H. Act, 1875.)

This meeting must be held in accordance with the provisions of Schedule III., P. H. Act, 1875:—

The chairman of the council must summon the meeting on the requisition of twenty ratepayers or owners in the district.

The persons making the requisition may be required to give security for payment, in the event of the resolution not being passed, of the cost incurred in relation to the meeting or the poll following on it. The amount of this security and the cost may be agreed upon between the twenty and the summoning officer (*i.e.*, the Chairman), or in case of dispute settled by a Court of summary jurisdiction.

The summoning officer, on the requisition being made, must fix a time and place for the meeting, and must give notice of it by advertisements in the local newspapers and by notices affixed to the principal doors of the churches and chapels in the district.

The summoning officer will preside⁴ at the meeting unless

unable or unwilling to do so ; in which case the meeting will choose a chairman.

The chairman must propose the resolution, and the meeting will then decide for or against it. But if any owner or rate-payer demands a poll, a poll must be taken ; and the summoning officer will be the returning officer for the purposes of this poll.

If no poll is demanded, or the demand for it is withdrawn, a declaration by the chairman will, in the absence of proof to the contrary, be sufficient evidence of the meeting's decision.

A person who "seconds" a demand for a poll "demands a poll," and a poll must be held even though the original demand has been withdrawn after the meeting. (*R. v. Dover Corporation*, (1903) 1 K. B. 668 ; 72 L. J. K. B. 210.) Darling, J., expressed the opinion that a demand for a poll cannot be withdrawn after the meeting has come to an end.

The summoning officer must send a copy (signed by him) of the resolution which has been passed to the L. G. B. ; and for three successive weeks he must have a copy of the resolution published by means of advertisements in the local newspapers and notices on the church and chapel doors.

When a resolution has been passed, all costs incurred in connection with it by the summoning officer will be paid out of the general district rate. (Schedule III., P. H. Act, 1875)

For the purpose of establishing a market the council may provide a market place, and construct a market house and all other conveniences necessary for holding a market ; make convenient approaches to the market ; purchase or take on lease land, and public and private rights in markets and tolls ; and may take stallages, rents, and tolls in respect of the use of the market. •

But a council cannot establish a rival market so as to interfere with the rights and privileges of any other person having a market in the district without his consent. (S. 166, P. H. Act, 1875.)

A market company has power to sell its undertaking to the district council. (S. 168, P. H. Act, 1875.)

When a district council establish a market under s. 166, *supra*, certain provisions of the Markets and Fairs Clauses Act,

1847, are incorporated with this P. H. Act, 1875, to enable the council to regulate the market. These provisions are as follows :—

(i) *With respect to the holding of the market.*

At least ten days' notice of the opening of the market must be given by the council by advertisements in the local papers and by posters before the market is opened.

After the market is opened, persons, other than licensed hawkers, who sell or expose for sale in any place except their own dwelling-place or shop within the district, articles in respect of which tolls are levied in the market, are liable to a 40s. penalty.

N.B.—A licensed hawker does not incur this penalty for selling goods for which a license is not required by the Hawkers Act, 1888, *i.e.*, fish, fruit, victuals, and coals, even though tolls are levied on those goods in the local market. (*Llandudno U. D. C. v. Hughes*, (1900) 1 Q. B. 472 ; 69 L. J. Q. B. 303.)

The council can prescribe on what days the market shall be held, and may by bye-laws appoint other market days.

There are penalties for exposing for sale in the market unwholesome meat or provisions and for obstructing a market keeper. (Ss. 12—16, Markets and Fairs Clauses Act, 1847.)

(ii) *With respect to weighing goods and carts.*

Weighing-houses and machines for the weighing and measuring of commodities sold in the market, and for weighing carts laden with goods must be provided by the council. And persons must be appointed to attend to the weighing at all times during which the market is held.

There are penalties for frauds in connection with the weighing by the buyer, seller, or person in charge of the weighing-machine.

The Weighing of Cattle Acts, 1887 and 1891, require every market authority, unless exempted by order of the Board of Agriculture, to provide in a market where tolls are levied on the cattle brought there a machine and accommodation for weighing cattle. "Cattle" includes sheep and swine. The order of exemption may be obtained on the Board being

satisfied that the sale of cattle at the market is small. (Ss. 21—30, Markets and Fairs Clauses Act, 1847.)

(iii) *With respect to stallages, rents and tolls.*

These charges must not be demanded before the market is completed and fit for use; and a certificate of two justices is to be conclusive evidence of the completion of the market.

Lists of the tolls, &c. are to be painted or printed on boards set up in the market place.

The council can alter these charges from time to time. Any dispute as to a charge is to be settled by a justice.

Stallages, rents and tolls must be paid on demand to the person appointed by the council to receive them.

Tolls for weighing or measuring goods or carts are to be paid at the time of weighing.

Tolls in respect of a cattle market become due when the cattle are brought into the market place and before they are penned or tied up there. If cattle are not removed within one hour after the close of the market another toll can be levied for them. (Ss. 31—41, Markets and Fairs Clauses Act, 1847.)

N.B.—All tolls levied by a district council as the market authority must be approved by the L. G. B. (S. 167, P. H. Act, 1875.)

“Stallage” is a sum payable by a person to the owner of the market for the exclusive occupation by him of a portion of the soil of the market-place by means of a stall, table or chair there. But baskets capable of being moved about cannot be charged with stallage. (*A. G. v. Tynemouth Corporation* (1900), 17 T. L. R. 77.) In this case the corporation established a fish market on some quays built by them. Berths were allotted to the fishing-boats as they came in, and their owners were given spaces on the quay on which to spread their fish. The corporation proposed to license fish-salesmen and to charge for the license. The L. G. B. refused to approve of this charge as a “toll.” It was held that the charge could not be justified as a “rent,” because anyone was at liberty to go on to the quay and sell fish; nor as “stallage,” because the fish-salesman occupied no portion of the market so as to render them liable for this charge.

The council can make bye-laws to regulate a market belonging to them for any of the purposes mentioned in s. 42, Markets and Fairs Clauses Act, 1847. These include—for regulating the use of the market-place and the buildings, stalls, pens, &c., and for preventing nuisances and obstructions in the market or its immediate approaches; for fixing the days and the hours each day on which the market is held; for fixing the rates for carrying articles from the market; for regulating the use of the weighing machines; and for preventing the sale or exposure for sale of unwholesome provisions.

Copies of the bye-laws must be conspicuously exhibited in the market. The approval of the L. G. B. will be necessary before they come into force (Confirmation of Bye-laws Act, 1884), and the council may from time to time alter and repeal them. (S. 167, P. H. Act, 1875.)

The Board of Agriculture's Markets and Sales Order, 1903, requires that market-places, pens, hurdles and fittings used for sales of cattle must be effectually cleaned and disinfected as soon as practicable after the close of the market; and that all sweepings should be mixed with quicklime and removed from contact with animals.

S. 27, Local Government Act, 1894, transfers to the district council the duties and powers of justices in relation to the abolition of fairs under the Fairs Act, 1871, and the alteration or abridgment of fair days under the Fairs Act, 1873.

The Home Secretary, on the representation of a district council and with the consent of the owner (if any) of the fair, can order it to be abolished; and on the representation of the district council or of the owner of the fair that it would be for the convenience or to the advantage of the public that the fair days should be altered or abridged, can make an order to that effect.

In both cases notice of the representation to the Home Secretary must be published once in the *London Gazette* and in three successive weeks in a local newspaper. And after the order has been made, notice of it must be published in the *London Gazette* and once in a local newspaper.

In the case of the owner of the fair applying for an alteration of the fair days, he must give notice in writing of his

representation to the Home Secretary to the clerk of the district council.

“Owner” means any person or persons entitled to hold a fair by any authority whatever, whether in respect of ownership of lands, or by charter, or otherwise. (Fairs Acts, 1871 and 1873.)

Milk Supply.

The Dairies, Cowsheds and Milkshops Order, 1885, gives district councils a control over the milk supply of their district. This Order was made under s. 34, Contagious Diseases (Animals) Act, 1878. Its provisions are to the following effect:—

A person must not carry on the trade of a cowkeeper, dairyman or purveyor of milk unless he is registered by the local authority.

But a person who makes butter and cheese and does not sell milk need not be registered, nor need a person who sells milk of his own cows in small quantities to his workmen or neighbours for their accommodation.

The council must, from time to time give notice by means of placards or by advertising in the local newspaper that registration is necessary and of the mode of registration. (Art. 6.)

Before occupying a new dairy (*i.e.*, one not in existence in 1885), a person must give one month's notice to the district council of his intention, and he must provide, to their reasonable satisfaction, for the ventilation (including air space), lighting, drainage and water supply of the place. (Art. 7.)

A building must not be occupied as a dairy if the ventilation, cleansing arrangements, &c. are not proper for the health of the cattle, the cleanliness of the milk vessels, and for protecting milk from infection or contamination. (Art. 8.)

A person who is suffering from an infectious disease, or who has recently been in contact with a patient, must not milk cows nor handle milk vessels, nor in any way take part in the business as far as regards the production, distribution or storage of milk. (Art. 9.)

A person, on receipt of a month's notice in writing from the council, must not allow a privy, cesspool or urinal to communicate directly with or to ventilate into a dairy. (Art. 10.)

A dairy must not be used as a sleeping apartment, or for any other purpose incompatible with cleanliness, or which is likely to contaminate the milk. (Art. 11.)

Pigs must not be kept in a shed used for cows, or in any place where milk is kept. (Art. 12.)

Under Article 13 the district council may (it is optional) make regulations—

- (a) for the inspection of cattle in dairies ;
- (b) for prescribing and regulating the lighting, ventilation, drainage and cleansing arrangements of dairies and cow-sheds occupied by persons who are required to be registered by Article 6, *supra* ;
- (c) for securing the cleanliness of milk-shops and vessels used for containing milk for sale ;
- (d) for prescribing precautions to be taken by purveyors of milk against infection and contamination. (Art. 13.)

N.B.—Model regulations were framed by the L. G. B., and published in the *London Gazette*, 10th February, 1899.

A copy of the regulations made by the council must be sent to the L. G. B. one month before they are to come into operation. (Art. 14.)

The council can revoke their regulations. (Art. 16.)

When making regulations the council can impose by them penalties for breach of the regulations, which penalties can be recovered summarily by the council from the offender. (S. 9, Contagious Diseases (Animals) Act, 1886.)

When disease exists among the cattle, milk from a diseased cow must not—(a) be mixed with other milk ; or (b) be sold or used for human food ; or (c) without being boiled, be fed to pigs or other animals, or sold for that purpose. (Art. 15.)

The prohibitions contained in (a) and (b) also apply to the milk from a cow which a veterinary surgeon has certified to be suffering from tubercular disease of the udder. (Order of 1899.)

A person guilty of an offence against the 1885 Order is liable to a penalty of 5*l.*, and to a daily penalty of 40*s.* for every day the offence continues after he has received notice in writing of the offence from the district council. (Art. 3, Order of 1886.)

See INFECTIOUS DISEASE (p. 237) further as to precautions for preventing infection from milk.

Notification of Births.

In districts where the Notification of Births Act, 1907, is in force, the following provisions apply :—

The father of every child born in the district, if he is actually residing in the house where the birth takes place at the time of its occurrence, and any other person in attendance upon the mother at the time of the birth, or within six hours after it, must give notice in writing to the medical officer of the district. If, however, the County Council have adopted the Act for any district in the county, this notice must be given to the county medical officer.

The notice must be by means of a prepaid letter or postcard, addressed to the medical officer at his office or residence, or must be by means of a written intimation delivered at his office or residence; and the notice must be given to him within thirty-six hours of the birth.

There is a penalty of 20s. for non-compliance with the provisions of the Act.

The council must furnish, free of charge, to any medical practitioners and midwives residing or practising in the district who apply for the same, addressed and stamped postcards containing the form of the notice.

A rural district council's expenses under the Act are "general" expenses.

The Act can be adopted by a County Council for the whole of the county or for any county district, or by an urban or rural district council. When the Act has been adopted by the County Council for a district, the district council can apply, or when the Act has been adopted by a district council, the County Council can apply, to the L. G. B., to be made the local authority for administering the Act in the district.

The L. G. B. can also, by Order, declare the Act to be in force in any area or district where it has not been adopted.

The adoption of the Act must be by resolution to be passed at a meeting of the council. One month's notice of the meeting, and of the proposed resolution, must be given to every member. The resolution, when passed, must be advertised in the local newspapers circulating in the district. A copy of the resolution

must be sent to the L. G. B., and the resolution will be of no effect until the L. G. B.'s consent to it has been given. When this consent has been obtained, the council must give notice of the provisions of the Act to the medical practitioners and midwives in the district. The Act will come into force at such time, not less than one month after first advertisement, as the L. G. B. fixes.

Nuisances.

NUISANCES DEFINED.

S. 91, P. H. Act, 1875, defines a number of nuisances which may be dealt with as such in the manner provided by the Act. The following things are to be deemed nuisances:—

Premises which are in such a state as to be a nuisance or injurious to health.

N.B.—A smell from a manufactory which, though it does not affect persons in good health, causes those who are ill to become worse, is a nuisance. (*Malton L. B. v. Malton Manure Co.* (1879), 4 Ex. D. 302; 49 L. J. M. C. 90.)

A house in a filthy condition may also be dealt with under s. 46, P. H. Act, 1875. This section provides that if, on the certificate of the medical officer, or of any two medical practitioners, it appears to the district council that a house is in such a filthy condition as to be dangerous to health, or that whitewashing or cleansing would tend to prevent infectious disease, the council can give notice in writing to the owner or occupier to whitewash or cleanse it. If he makes default, he becomes liable to a daily penalty of 10s., and the council can do the work and recover the expense summarily from the defaulter. (S. 46, P. H. Act, 1875.)

In proceedings for the abatement of a nuisance, if the Court is of opinion that a house is unfit for human habitation owing to the nuisance, it may order that the house be not inhabited until made fit for that purpose. When the required work has been done, the Court may determine its former order and make an order declaring the house to be habitable. (S. 97, P. H. Act, 1875.)

A pool, ditch, gutter, privy, urinal, cesspool, drain or ashpit

which is in such a state as to be a nuisance or injurious to health.

S. 47, P. H. Act, 1875, makes provision with regard to sanitary matters of a like nature. It provides that if a person in an urban district—(a) allows stagnant water to remain in the cellar or other place in his house for twenty-four hours after receiving written notice from the council to remove it; or (b) allows the contents of a privy or cesspool to overflow or soak therefrom, he will be liable to a penalty of 40s. and a daily penalty of 5s. while the offence continues, and the council can abate the nuisance and recover their expenses summarily from the occupier of the premises. (S. 47, P. H. Act, 1875.)

When there is an offensive ditch on the boundary of two adjoining districts, either council can summon the other before a Court of summary jurisdiction, which can make an order as to which of the two are to cleanse the ditch, and what must be done to keep it clean. (S. 48, P. H. Act, 1875.)

An animal so kept as to be a nuisance or injurious to health.

N.B.—An offensive smell from a pig-sty, though nobody's health may be injured thereby, is a nuisance. (*Banbury U. S. A. v. Page* (1881), 8 Q. B. D. 97; 51 L. J. M. C. 21.)

A person who in an urban district keeps swine or a pig-sty in a dwelling-house, or so as to be a nuisance, can also be proceeded against under s. 47, P. H. Act, 1875. The offender is liable to the penalties prescribed by the section, and the district council can abate the nuisance.

An accumulation or deposit which is a nuisance or injurious to health. But no penalty is to be imposed when such accumulation is necessary for the carrying on of any business, and the Court before which proceedings are taken is satisfied that the accumulation has not been kept longer than is necessary for the purposes of the business, and that the best means available have been taken to prevent injury to the public health.

Ss. 49 and 50, P. H. Act, 1875, make further provision, in respect of urban districts, for the removal of filth and for the periodical removal of manure from mews :—

If an accumulation of filth or manure appears to the sanitary inspector to be a nuisance, he can give notice to the owner of it or to the occupier of the premises where it is deposited, to remove it within twenty-four hours. If the notice is not com-

plied with, the council can have the accumulation removed and sold. Any surplus after deducting their expenses from the price realized must be handed to the owner by the council, and any deficit can be recovered from him summarily. (S. 49, P. H. Act, 1875.)

An urban council can give notice by placards or other forms of announcement requiring the periodical removal of manure from mews and stables. A person who fails to remove it at the intervals specified in the notice is liable, without further notice, to a penalty of 20s. for each day he allows the manure to accumulate. (S. 50, P. H. Act, 1875.)

A house or room so overcrowded as to be dangerous or injurious to the health of the inmates, whether or not they are members of the same family.

N.B.—"House" includes a night-shelter (*R. v. Mead* (1895), 64 L. J. M. C. 169); also a day school. (*Wimbledon U. D. C. v. Hastings* (1902), 87 L. T. 118.)

A ship, except a vessel of the Royal Navy or a foreign ship, lying in a river or harbour within the district of the local authority, is to be deemed to be a "house." (S. 110, P. H. Act, 1875.)

Where there have been two convictions in three months against the provisions of any Act relating to overcrowding (whether the persons convicted are the same or not), a Court of summary jurisdiction can, on the application of the council, order that house to be closed for such period as the Court deems proper. (S. 109, P. H. Act, 1875.)

A factory (this section only applies to a "domestic" factory, as defined by the Factories Act, 1901, p. 105), a workshop, or workplace (see p. 109) not kept in a clean state, or which is overcrowded, or which is not properly ventilated so as to render harmless the manufacturing vapours and other impurities.

N.B.—A workshop is to be deemed to be overcrowded so as to be dangerous or injurious to the health of the persons employed therein if there is less than 250 cubic feet of space for every person employed in each room, or, during a period of overtime, 400 cubic feet of space. The Secretary of State may modify these proportions of air-space to employees. (S. 3, Factory Act, 1901.)

A fire-place or furnace used for working engines by steam, or

in a mill, brewery, gas works, or in any manufacturing or trade process, which does not as far as practicable consume its own smoke; and a chimney (not of a private dwelling-house) which emits black smoke in quantities so as to be a nuisance.

The Court may, however, dismiss the summons if satisfied that the furnace has been properly constructed and carefully attended to by the person in charge of it. (S. 91, P. H. Act, 1875.)

N.B.—It is the duty of the district council to enforce any Act in force within the district requiring furnaces to consume their own smoke. (S. 92, P. H. Act, 1875.)

A tent, van, shed, or similar structure used for human habitation which is in such a state as to be a nuisance or injurious to health, or which is so overcrowded as to be injurious to the health of the inmates, is to be deemed a nuisance under s. 91, P. H. Act, 1875. (S. 9, Housing Act, 1885.) The district council can make bye-laws for the proper cleanliness of these structures and generally to prevent nuisances in connection with them. An officer of the council duly authorized for the purpose can enter these structures if he has reason to believe a nuisance exists or that there is therein a person suffering from infectious disease. There is a 40s. penalty for obstructing the officer. (S. 9, *ibid.*)

S. 35 of Part III., P. H. Act, 1907, defines other things which are to be deemed nuisances within the meaning of the P. H. Act, 1875. These are the three following:—

Any cistern used for the supply of water for domestic purposes so placed, constructed, or kept as to render the water therein liable to contamination causing or likely to cause risk to health.

Any gutter, drain, shoot, stack-pipe, or down-spout of a building which, by reason of its insufficiency or its defective condition, causes damp in the building or in an adjoining building.

Any deposit of material in or on a building or land which causes damp in the building or in an adjoining building so as to be dangerous or injurious to health. (S. 35, P. H. Act, 1907.)

N.B.—This s. 35 is only in force in districts to which it or the whole of Part III. has been applied by L. G. B. Order.

An unfenced quarry, chalk-pit, or sand-pit within fifty yards of a highway or other place of public resort dedicated to the public may be dealt with as a nuisance under the P. H. Act, 1875. (Quarry Act, 1887.)

If a barbed wire fence adjoining a highway is a nuisance, *i.e.*, if it may probably be injurious to persons or animals lawfully using the highway, the district council can serve notice in writing on the occupier of the land on which the fence is to abate the nuisance within the time specified in the notice. This time must not be less than one month or more than six months after the date of the notice.

If the notice is not complied with, the council can apply to a Court of summary jurisdiction, which, on being satisfied that the fence is a nuisance, can make an order for its abatement. If this order is not obeyed, the council can do whatever is necessary in execution of the order, and recover their expenses from the defaulter.

Where the district council are the occupiers of the land, any ratepayer can proceed under this Act, and the notice to abate the nuisance must be served on the clerk to the council.

The council's expenses incurred in the execution of this Act are to be defrayed in the same manner as highway expenses. (Barbed Wire Act, 1893.)

ABATEMENT OF NUISANCES.

It is the duty of a district council to cause their district to be inspected from time to time to ascertain what nuisances exist and require abatement, and to enforce the provisions of the P. H. Act, 1875, in order to abate them. (S. 92, P. H. Act, 1875.) The L. G. B., if satisfied that a council have neglected their duty with regard to a nuisance, may authorize a police officer in the district to take the necessary proceedings under the Act; but this officer must not enter a person's house without leave, or without a justice's warrant. (S. 106, P. H. Act, 1875.)

Information of a nuisance can be given to the council by any person aggrieved by it, or by two inhabitant householders, or by one of the council's officers, or by the relieving officer, or by any police officer of the district. (S. 93, P. H. Act, 1875.)

On receiving information of a nuisance, the council must, if

satisfied of its existence, serve a notice on the person responsible for it, requiring him to abate the nuisance, and to do such works as may be necessary within a specified time. (S. 94, P. H. Act, 1875.)

N.B.—A notice to abate which does not specify what must be done to abate the nuisance, when no works are required for that purpose, is a valid notice. In the case of a notice to abate a smoke nuisance, “there is no more need of specifying on the notice the work to be done to abate this nuisance than there would be in specifying the means to be taken to remove a pig if it were a nuisance.” (Lawrance, J., *Millard v. Wastell*, (1898) 1 Q. B. 342; 67 L. J. Q. B. 277.)

When the nuisance arises from any structural defect, or when there is no occupier of the premises, notice to abate must be served on the owner. (S. 94, P. H. Act, 1875. See also p. 324 as to the powers given to the district council on receipt of complaint that a drain, &c. is a nuisance.) When, however, the person causing the nuisance cannot be found, and it is clear to the council that it is not due to any act or sufferance of the owner or occupier, the council can abate the nuisance without any further order. (S. 94, P. H. Act, 1875.)

If the notice to abate the nuisance is not complied with, or it appears to the council that the nuisance, though abated, is likely to recur, complaint may be laid before a justice, and the person on whom the notice was served may be summoned to appear before the Court. The Court, if satisfied that the nuisance exists or is likely to recur, can make an order directing what work must be done to abate the nuisance or to prevent its recurrence. And, further, the Court can impose a penalty of 5*l.* and direct the person on whom the order is made to pay the costs incurred up to the time of the hearing and the making of the order. (S. 96, P. H. Act, 1875.)

N.B.—Any works which the justices direct shall be done must be specified in their order. (*R. v. Wheatley* (1885), 16 Q. B. D. 34.) The order must be in writing, and must be signed by at least two justices present at the hearing of the summons. (*Wing v. Epsom U. D. C.*, (1904) 1 K. B. 798; 73 L. J. K. B. 389.) •

It is no answer to proceedings on account of non-compliance

with a notice to abate that a pipe or drain (the subject of the notice) is a "sewer," and therefore repairable by the district council. But the person served with the notice in such a case could recover from the council the expenses he incurred in complying with the notice, if able to show that the drain was in fact a sewer. (*Wincanton R. D. C. v. Parsons*, (1905) 2 K. B. 34; 74 L. J. K. B. 533.)

If the person by whose act or default the nuisance arises, or if the owner or occupier of the premises, cannot be found, the Court may direct its order to the council, who must then do the necessary works. (S. 100, P. H. Act, 1875.)

A person neglecting to obey the Court's order to comply with an abatement notice is liable to a penalty of 10s. for each day he makes default. A person who wilfully contravenes an order of prohibition made by the Court is liable to a penalty of 20s. a day during such contrary action; moreover, the council can enter his premises, abate the nuisance, and recover their expenses summarily from the offender. (S. 98, P. H. Act, 1875.)

There is an appeal to Quarter Sessions against the justices' order, and pending the determination of the appeal no proceedings must be taken against the appellant, and no work done in pursuance of the order. (S. 99, P. H. Act, 1875.)

Anything removed by the council in abating a nuisance can be sold by them at public auction, and the council can deduct their expenses from the proceeds of the sale, handing over any surplus to the owner if he so demands. (S. 101, P. H. Act, 1875.)

All reasonable costs and expenses incurred in laying a complaint, or giving notice to abate, or in obtaining an order in relation to a nuisance, or in carrying out that order, can be recovered summarily, together with any penalties, from the person on whom the order is made.

Any costs recoverable by the council from the "owner" of the premises can be recovered by them from the "occupier" for the time being; but an occupier is not to be required to pay any sum beyond a sum equal to the amount of rent due from him to the owner. The burden of proving that the sum demanded by the council exceeds the amount due for rent from

him to the owner is on the occupier. (S. 104, P. H. Act, 1875.)

When a nuisance within the district arises outside the district the council can take proceedings for its abatement before a Court having jurisdiction in the place where the nuisance arises. (S. 108, P. H. Act, 1875.)

If the council consider that summary proceedings would not afford an adequate remedy, they can take proceedings to abate a nuisance in a superior Court (s. 107, P. H. Act, 1875), *e.g.*, they can bring an action for an injunction. But in such a case the Attorney-General's sanction is required, and the action must be brought in the name of the Attorney-General with the council as relators. (*Tottenham U. D. C. v. Williamson*, (1896) 2 Q. B. 353; 65 L. J. Q. B. 591.)

The council's officers can enter premises for the purpose of examining a nuisance there at any time between the hours of 9 a.m. and 6 p.m.; or, in the case of a nuisance arising out of any business, at any time when the business is in progress. They must be admitted from time to time when an abatement order has been made by the Court in respect of the premises, and also when this order has not been complied with. (S. 102, P. H. Act, 1875.)

The council or their officers have no right, however, to enter premises without first obtaining the leave of the owner or occupier of the premises. (*Consett U. D. C. v. Crawford*, (1903) 2 K. B. 183; 72 L. J. K. B. 571.)

If admission is refused, the officer of the council, after giving reasonable notice of his intention to the owner or occupier, can make a complaint on oath before a justice, who may then make an order for the officer's admission to the premises. This order remains in force until the nuisance has been abated. (S. 102, P. H. Act, 1875.) A justice has a discretion in making this order: he is entitled to be satisfied by evidence that the object for which an entry to the premises is required is one that comes within the nuisances defined by s. 91, P. H. Act, 1875 (*see supra*). (*Wimbledon U. D. C. v. Hastings* (1902), 87 L. T. 118.)

There is a 5*l.* penalty for disobeying a justice's order for admission. (S. 103, P. H. Act, 1875.)

BYE-LAWS FOR PREVENTION OF NUISANCES.

An urban council can make bye-laws for the prevention of nuisances arising from snow, filth, dust, ashes and rubbish. (S. 44, P. H. Act, 1875.)

An urban council can make bye-laws for the prevention of the keeping of animals on any premises so as to be injurious to health. (S. 44, P. H. Act, 1875.)

N.B.—A rural council can be invested by the L. G. B. with the powers given by this section.

A bye-law made by a rural authority prohibiting the keeping of swine within the distance of fifty feet from a dwelling-house was held to be bad as being unreasonable.

“It seems to me unreasonable to say that in country districts nobody shall keep a pig within fifty feet of his dwelling-house.” (*Per* Lord Coleridge, *Heap v. Burnley Rural Sanitary Authority* (1884), 12 Q. B. D. 617; 53 L. J. M. C. 76.) On the other hand, a bye-law made by an urban authority prohibiting the keeping of swine within 100 feet of a dwelling-house was held to be a reasonable and valid bye-law. “Such a rule may be most reasonable in a populous place.” (*Per* Lord Blackburn, *Wanstead L. B. v. Wooster* (1873), 38 J. P. 21.)

A district council, in districts where s. 26, sub-s. 1, of Part III., P. H. Act, 1890, has been adopted, can make bye-laws prescribing the times for the carriage through the streets of any fæcal or offensive matter or liquid, whether it is in course of transit from within or without the district; also for providing that the vessel or cart used shall be so constructed and covered as to prevent the escape of the stuff; and, further, for compelling the cleansing of any place on which such stuff may have been dropped in the course of its removal. (S. 26, sub-s. 1, P. H. Act, 1890.)

N.B.—This sub-section of s. 26 cannot be adopted by a rural council.

Offensive Trades.

It is an offence—there being a penalty of 50*l.* and a daily penalty of 40*s.*—to establish in an urban district, without the consent in writing of the council, any of the following trades:

blood-boiler, fellmonger, bone-boiler, soap-boiler, tallow-melter, tripe-boiler, or any other noxious trade, business or manufacture. (S. 112, P. H. Act, 1875.)

N.B.—The trades above mentioned are essentially offensive trades by reason of the impossibility of carrying them on without producing offensive smells. A business which is not necessarily an offensive business, *e.g.*, a fried-fish shop, cannot be dealt with under this section. (*Braintree L. B. v. Boyton* (1884), 52 L. T. 99.) A smallpox hospital is not a “noxious business” to which the section applies. (*Withington L. B. v. Manchester Corporation*, (1893) 2 Ch. 19; 62 L. J. Ch. 393.) And where a company established a bone-steaming business which caused no offensive smell, it was held that no offence had been committed against s. 112. (*Cardiff Manure Co. v. Cardiff Union* (1890), 54 J. P. 661.)

In districts where s. 51, Part III., of the P. H. Act, 1907, is in force, a district council, subject to the sanction of the L. G. B., can by order declare what businesses are to be considered offensive trades and businesses. S. 51 provides that the words “any other trade, business or manufacture, which the local authority declare by order confirmed by the L. G. B., and published in such manner as the Board direct, to be an offensive trade,” shall be substituted for the words in italics contained in s. 112, P. H. Act, 1875, *supra*. Of course, the powers given by s. 51, P. H. Act, 1907, are not confined to urban councils; the section will be in force in any district to which it or the whole of Part III. of the Act has been applied by order of the L. G. B.

Bye-laws can be made by the council with respect to offensive trades established with their consent in the district, and whether the trade was established before or after s. 51, P. H. Act, 1907, came into force in the district, in order to prevent or diminish any noxious or injurious effects of the trade. (S. 113, P. H. Act, 1875, and s. 67, sub-s. 2, P. H. Act, 1907.)

If a candle-house, melting-place, soap-house, slaughter-house, or any place for boiling offal or blood, or for boiling, burning or crushing bones, or a place used for any business causing an offensive smell, is certified by the medical officer of an urban council, or by any two medical practitioners, or by ten in-

habitants of the district, to be a nuisance or injurious to health, the council must lay a complaint before a justice.

The person responsible can then be summoned, and a penalty of 5*l.* can be imposed for a first offence, the penalty being doubled for each subsequent offence until it may amount to 200*l.*

The Court may, however, on the person summoned undertaking to abate the nuisance as far as is reasonably practicable, suspend its final determination. (S. 114, P. H. Act, 1875.)

N.B.—A certificate is valid if it states that the trade is a “nuisance” without stating that it is “injurious to health”; for there might be a “nuisance” which is not injurious to health, and there might be something “injurious to health” which is not a nuisance. (*Houldershaw v. Martin* (1885), 1 T. L. R. 323.)

The council can take similar proceedings where the nuisance in the district is created by an offensive trade carried on outside the district; but in such case the proceedings must be before a Court having jurisdiction in the place where the trade or business is established. (S. 115, P. H. Act, 1875.)

Nothing in the P. H. Acts is to be construed to extend to mines of different descriptions so as to interfere with or obstruct their efficient working; nor to the smelting of ores or minerals, nor to the calcining, puddling and rolling of iron and other metals, nor to the conversion of pig-iron into wrought-iron, so as to obstruct or interfere with any of such processes. (S. 334, P. H. Act, 1875.)

S. 334 does not take away a district council’s common law rights in respect of a nuisance caused by any of the above-mentioned works and processes. (*A.-G. v. Logan*, (1891) 2 Q. B. 100.)

Officers.

An urban district council must from time to time appoint fit and proper persons to be Medical Officer of Health, surveyor, inspector of nuisances, clerk and treasurer, and must appoint or employ such assistants, collectors and other officers and servants as may be necessary for the efficient execution of the P. H. Act. Subject to the control of the L. G. B. under the General Order of March 23rd, 1891 (*infra*), relating to the

appointment, salary and duties of medical officers and sanitary inspectors, towards whose salaries the County Council contribute, the district council may pay to their officers and servants such reasonable salaries, wages and allowances—"allowances" include extra payment for extra work (*Edwards v. Salmon* (1889), 23 Q. B. D. 531; 58 L. J. Q. B. 571)—as the council think proper.

Subject, again, as above, officers and servants appointed under this Act are removable at the pleasure of the council. (S. 189, P. H. Act, 1875.) This section enables the council to dismiss a servant (in the particular case, the matron of a hospital who had been engaged by resolution of the council at a salary of 1*l.* a week) at pleasure, and at any time, and without assigning any reason. (*Wood v. East Ham U. D. C.* (1907), 71 J. P. 129.)

A rural district council must also appoint a medical officer and an inspector of nuisances, and employ such other officers and servants as are necessary. The clerk and the treasurer will also be the officers of the district council in the capacity of Board of Guardians; and these officers may be paid an increased salary, such as the council, with the approval of the L. G. B., think reasonable for their additional duties. If the clerk of the union is unwilling to undertake such additional duties, the assistant clerk of the union must be appointed to discharge the duties of clerk to the district council. (S. 190, P. H. Act, 1875.)

The same person may be appointed both surveyor and inspector of nuisances. But the treasurer (or his partner, or any person in his employment) cannot hold the office of, or officiate as, clerk, nor can the clerk (or his partner, or any person in his employment) hold the office of, or act as, treasurer. There is a penalty of 100*l.* for breach of this enactment, which may be recovered by any person, with full costs, by an action of debt. (S. 192, P. H. Act, 1875.)

With the sanction of the L. G. B. the same person may be appointed medical officer or inspector of nuisances for two or more districts by the councils of those districts; and in such case the appointment and the proportions in which the salary and charges of that officer are to be paid by the councils will be prescribed by L. G. B. Order. (S. 191, P. H. Act, 1875.)

The person appointed medical officer must be a legally qualified medical practitioner.

In case of the medical officer's illness or inability to act, the council can appoint and pay a deputy medical officer, subject to the approval of the L. G. B. (S. 191, P. H. Act, 1875.) But a district council may arrange with the County Council that the services of a medical officer in the employment of the County Council may be regularly available in the district, on such terms as may be agreed upon by the two councils. In such a case, the district council need not appoint a medical officer as required by ss. 189 and 190, *supra*. (S. 17, Local Government Act, 1888.)

Further, the L. G. B., if it appears that the appointment of a medical officer for two or more districts situated wholly or partly in the same county would diminish expense, or be otherwise advantageous, can, on representation being made to the Board, by order unite the districts for that purpose. The L. G. B. can prescribe the mode of appointment and removal of this officer, and also the proportion in which the expenses of this officer are to be borne by the several councils. No other medical officer can be appointed in a constituent district except as an assistant to the officer appointed for the united districts. No urban district containing a population of 25,000, or a borough with a separate Court of Quarter Sessions can be included in such union of districts unless the council of such district consent. The L. G. B. must give at least twenty-eight days' notice of the proposal to make this order to the council of every district proposed to be included in the union, and if within twenty-one days a council give notice to the L. G. B. that they object, the L. G. B. can only include that district in the union by means of a Provisional Order confirmed by Act of Parliament. (S. 286, P. H. Act, 1875.)

The County Council, or a County Borough Council (s. 34, Local Government Act, 1888), may contribute to an urban or rural district council half the salary of the medical officer or of the sanitary inspector. (S. 24, Local Government Act, 1888.) But in such case the appointment of these officers will be governed by the provisions of the L. G. B. Orders of March 23rd, 1891. The appointment, the period of the

appointment, and the salary to be paid must then be approved by the L. G. B., and, without the Board's approval, these officers cannot be removed from their posts or suspended from employment. A person must not be appointed who does not agree to give one month's notice previous to resigning office, or to forfeit such sum as is agreed upon by way of liquidated damages. When, however, any change in the duties or salary of such an officer are deemed necessary, and he declines to acquiesce in such change, the council may, with the consent of the L. G. B., and after he has been given six months' notice in writing signed by the clerk, determine his office.

The duties of medical officers are set out in Art. 18, L. G. B Orders of March 23rd, 1891.

- (1) The medical officer must keep himself informed respecting the influences affecting, or threatening to affect, injuriously the public health of the district.
- (2) He must inquire into the causes and distribution of disease in the district, and ascertain how far they have depended on conditions capable of removal or mitigation.
- (3) He must by inspection, systematic and as the occasion requires, keep himself informed of the conditions injurious to the health of the district.
- (4) He must be prepared to advise the council on all matters affecting the health of the district, and on all sanitary points; and in cases requiring it, he must certify for the guidance of the council or justices as to any matter in respect of which a medical certificate is required as a basis of sanitary action.

N.B.—This certificate is required, for example, before the council can take steps under s. 46, P. H. Act, 1875, for purifying a house with a view to checking infectious disease, and justices are empowered to order the removal of a corpse to a mortuary on a medical certificate by s. 142, P. H. Act, 1875.

- (5) He must advise the council on any question relating to health involved in the framing and working of bye-laws, and as to the adoption by the council of the

Infectious Diseases Prevention Act, 1890, or of any sections of it.

- (6) He must, on receiving information of the outbreak of an infectious disease of a dangerous character, without delay, visit the spot where the outbreak has occurred; must inquire into its causes and circumstances; must advise as to the measures to be taken to prevent the spread of the disease, and must take such steps as he is authorised to take by any statute or resolution of the council.

N.B.—See p. 230 as to the removal of patients from premises in which isolation would not be possible, and also as to the disinfection of premises and articles exposed to infection.

- (7) Subject to the council's instructions, he must direct or superintend the work of the inspector of nuisances in the manner and to the extent that the council approve. On receiving information from the inspector that his intervention is required, owing to the existence of a nuisance injurious to health or owing to the overcrowding of a house, the medical officer must take, as early as practicable, such steps as he is by statute or by resolution of the council legally authorised to take, and as the circumstances of the case so require.
- (8) In any case in which it may appear to him advisable, or in which he is so directed by the council, he must himself inspect any carcase, meat, game, fish, vegetables, bread, milk, &c. exposed for sale and intended for the food of man. If he finds such food unfit for the food of man, he must give directions that it may be dealt with by a justice according to ss. 116 and 117, P. H. Act, 1875. (See UNSOUND FOOD, p. 341.)
- (9) He must perform all duties lawfully imposed upon him by the bye-laws and regulations of the council.
- (10) He must inquire into any offensive process of trade in the district, and report on the means appropriate for preventing a nuisance or injury to health therefrom. (See p. 273.)
- (11) He must attend at the office of the council and at any other place at such times as the council direct:

- (12) He must report from time to time, in writing, to the council his proceedings and the measures necessary to be taken for improving or protecting the health of the district. He must likewise report on the sickness and mortality of the district, so far as he is able to ascertain the cause.
- (13) He must keep books, to be provided by the council, recording his visits and observations and instructions thereon; also the date and nature of applications made to him, the date and result of action taken by him thereon, and of any action taken on previous reports. He must produce these books when required by the council.
- (14) He must make an annual report to the council, up to the end of December in each year, comprising a summary of the action taken, or which he has advised the council to take, during the year to prevent the spread of disease, and an account of the sanitary state of the district generally. The report must also contain an account of inquiries made by him as to conditions injurious to health existing in the district, and of the proceedings relating to those conditions; and also an account of the supervision exercised by him, or on his advice, for sanitary purposes over places and houses which the council have power to regulate, with the nature and results of any proceedings. The report must also record the action taken by him, or on his advice, in regard to offensive trades, factories and workshops, and dairies, cowsheds and milkshops. It must also contain tabular statements (on forms supplied by the L. G. B. or to like effect) of the sickness and mortality in the district, classified according to diseases, ages and localities.

If the medical officer ceases to hold office before the 31st December, he must make the report for so much of the year as has expired when he ceases to hold office.

N.B.—The annual report must also contain a specific report on the administration of the Factory and Workshop Act, 1901, in the district as regards the workshops and workplaces there; and he must send a copy of the

report, or so much of it as deals with this subject, to the Home Office. (S. 132, Factory and Workshop Act, 1901.)

- (15) He must give immediate information to the L. G. B. of any outbreak of a dangerous epidemic disease, and must send to the L. G. B. a copy of his annual report and of any special report. He must make a special report to the L. G. B. of the grounds of any advice given by him to the council with a view to their requiring the closing of any school in pursuance of the Board of Education's Code of Regulations in force.
- (16) He must send to the County Council information, or a copy of a report, of any dangerous infectious disease when he sends such information, &c. to the L. G. B.
N.B.—The medical officer is required by s. 19, Local Government Act, 1888, to send to the County Council a copy of every periodical report that he is required by the regulations of the L. G. B. to send to the L. G. B.
- (17) He must observe and execute the instructions issued by the L. G. B. and the lawful orders of the council applicable to his office.
- (18) He must, when regulations have been made by the L. G. B. under s. 134, P. H. Act, 1875 (see INFECTIOUS DISEASE, p. 235), observe them so far as they relate to or concern his office. (Art. 18, L. G. B. Order, 1891.)

The medical officer must, on becoming aware that a woman, young person or child, is employed in a workshop in which no abstract of the Factory and Workshop Act is affixed, as required by the Act, give written notice thereof to the factory inspector of the district. (S. 128, Factory and Workshop Act, 1901.)

N.B.—This section does not apply to institutions (factories) which are carried on for charitable or reformatory purposes. (S. 5, Factory and Workshop Act, 1907.)

The duties of the inspector of nuisances are set out in Art. 19 of the L. G. B. Orders of March 23rd, 1891.

- (1) The inspector must perform the duties imposed upon him by the P. H. Act, 1875, and other Acts, or by L. G. B. Orders, either under the special direction of the council or of the medical officer (so far as this

officer is authorised so to do by the council), or without such directions if none are given.

- (2) He must attend all meetings of the council when required.
- (3) He must, by systematic and occasional inspection of the district, inform himself of nuisances requiring abatement.
- (4) On receiving notice of a nuisance or of breach of bye-laws for the suppression of nuisances, he must visit the spot and inquire into the nuisance or breach of the bye-law as early as possible.
- (5) He must report to the council any noxious or offensive trade established in the district, and the breach of any bye-laws made in respect of such trades.
- (6) He must report to the council any damage done to works of water supply or other works belonging to the council, also any case of wilful or negligent waste of water supplied by the council, or any fouling of water for domestic purposes.
- (7) He must from time to time, and forthwith on receipt of a complaint, visit and inspect shops and places kept and used for the preparation or sale of meat, fish, game, fruit, bread, milk, &c., and examine any article there. In case any article appears to him to be intended for the food of man and to be unfit, he must seize it and take steps that it may be dealt with by a justice under sects. 116 and 117, P. H. Act, 1875 (see UNSOUND FOOD, p. 341). But in case of doubt he must report the matter to the medical officer to obtain his advice on the matter.
- (8) He must, when and as directed by the council, procure and submit samples of food, drink, and drugs suspected to be adulterated, to be analyzed under the Sale of Food and Drugs Act, 1875, and on receiving a certificate that the article is adulterated, he must cause a complaint to be made, and take the other proceedings prescribed by the Act.

N.B.—The local authorities for the execution of the Food and Drugs Acts are the County Council and the councils of boroughs with a population of 10,000

according to the 1881 census. (S. 39, Local Government Act, 1888.)

- (9) He must give immediate notice to the medical officer of the occurrence of any infectious disease; and whenever he considers the intervention of the medical officer necessary in consequence of a nuisance injurious to health or of the overcrowding of a house, he must inform that officer of it.
- (10) He must, subject to the council's directions, attend to the medical officer's instructions with regard to measures for preventing the spread of infectious disease.
- (11) He must enter from day to day, in a book provided by the council, particulars of his inspections and of any action taken by him in execution of his duties. He must also keep a book or books, to be provided by the council, so arranged as to form a continuous record of the sanitary conditions of any premises in respect of which any action under the P. H. or other Acts has been taken; and he must keep any other systematic records that the council require to be kept.
- (12) He must, at all reasonable times, when applied to by the medical officer, produce to him his books and give him such information as he can in respect to any matter relating to the duties of the inspector.
- (13) He must, if directed by the council, superintend the due execution of all works undertaken by the council for the suppression or removal of nuisances.
- (14) He must, if directed by the council, act as the council's officer under the Contagious Diseases (Animals) Act, 1886, and any orders or regulations made under it.
N.B.—The local authorities for enforcing the Diseases of Animals Acts are the County Council and the councils of boroughs with a population of over 10,000. (Diseases of Animals Act, 1894.)
- (15) He must observe and execute all lawful orders and directions of the council and orders of the L. G. B. applicable to his office. (Art. 19, L. G. B. Orders, 1891.)

Officers or servants of the district council must not in anywise be concerned or interested in any bargain or contract with the

district council made by the council for any of the purposes of the P. H. Acts. (S. 193, P. H. Act, 1875.)

But the P. H. (Members and Officers) Act, 1885, introduces certain exceptions. An officer or servant of the council may, if the council consent, be lawfully concerned or interested in a contract with the council for the sale, purchase, lease, or hiring of any lands, rooms, or offices, or as a shareholder in any joint stock company.

In the case of a sale or hiring, &c. of land, rooms, or offices this consent must be given by two-thirds of the members of the council present at a meeting held after seven days' notice has been published in a local newspaper and given to every member, stating the nature of the contract, and the time of the meeting at which the question is to be considered. (Members and Officers Act, 1885.)

If an officer or servant is concerned or interested in a contract with the district council, or under colour of his office exacts or accepts any fee or reward whatsoever other than his proper salary, wages and allowances, he is incapable of afterwards holding or continuing in any office or employment under the P. H. Act, and is liable to forfeit 50%, which any person—provided he has the written consent of the Attorney-General (P. H. Officers Act, 1884)—can recover by an action of debt. (S. 193, P. H. Act, 1875.)

A contract made by a district council with one of their officers, or in which an officer in their employment is concerned or interested, is void. (*Melliss v. Shirley L. B.* (1885), 16 Q. B. D. 446; 55 L. J. Q. B. 143.)

This section is not only aimed at the secret taking of bribes or commissions by officers of the local authority, but includes any advantage which an officer may receive from a contract made by the district council, however honest his conduct in the matter may be. In *Whiteley v. Barley* (1888), 21 Q. B. D. 154; 57 L. J. Q. B. 643, the local authority had contracted with builders for the execution of an improvement scheme. The council's surveyor was employed to take out the bills of quantities, and the contracts provided that for these services he was to be paid a percentage on the amount of the contract by the contractors. It was held that he was concerned or interested in the contracts, and therefore liable to the penalties; and Lopes, L. J., expressed the opinion that if the percentage had been payable by the local

authority instead of by the contractors, the section would equally apply.

But the district council can lawfully remunerate an officer for extra services he has performed beyond the usual scope of his employment. In *Edwards v. Salmon* (1889), 23 Q. B. D. 531; 58 L. J. Q. B. 571, the clerk of the local authority was paid a fixed salary which was to include "all legal charges except for contentious business matters and out-of-pocket expenses." On the completion of a sewerage scheme, as an acknowledgment of his services in connection with the successful promotion of the scheme, the local authority by resolution awarded him 500 guineas for his services. It was held that this payment was a perfectly lawful one for the authority to make, and that it did not constitute an acceptance by the clerk under colour of his office of a reward other than his proper salary, &c.

N.B.—In case of doubt, the council can apply to the L. G. B. for their approval of the payment being made; and if the L. G. B. gives its sanction the district auditor cannot disallow the payment. (Local Authorities Expenses Act, 1887.)

An officer entrusted with money must give sufficient security to the local authority for the faithful execution of his office and for duly accounting for all moneys which may be entrusted to him. (S. 194, P. H. Act, 1875.)

Every officer and servant must when required to do so account for all moneys received by him, and must deliver the vouchers for all payments made by him and pay over to the treasurer all moneys owing by him on the balance of accounts.

Rate collectors must within seven days after the receipt of money on account of rates pay it over to the treasurer, and must also, as the council direct, deliver a signed list containing the names of persons who have neglected or refused to pay the rates, and the sums respectively due from them. (S. 195, P. H. Act, 1875.)

If an officer or servant of the council fails to render accounts or pay over moneys, or fails within five days after written notice in that behalf to deliver up any books, documents, &c. relating to the execution of this Act or belonging to the local authority, he may be summoned on the complaint of the council. The Court has the power to commit the defaulter to gaol until he has rendered the accounts, &c. (S. 196, P. H. Act, 1875.)

Promotion of Bills.

The Borough Funds Acts, 1872 and 1903, which provide for the promotion of and opposition to Bills by district councils, do not affect the provisions of any local Act giving a council power to promote Bills in Parliament. The council can, however, resolve to adopt the procedure provided by the Borough Funds Act, 1903, instead of that provided by the local Act. (S. 4, Borough Funds Act, 1903.)

No expense in relation to the promotion of a Bill is to be charged by an urban district council on the local funds unless the promotion is sanctioned by the ratepayers at a special meeting called for the purpose. (S. 1, Borough Funds Act, 1903.)

The sanction of the ratepayers is not necessary for the opposition by the council to a Bill. (S. 7, Borough Funds Act, 1903.)

N.B.—The Borough Funds Acts give no power to a rural council to promote a Bill; and see the case of *Clerceton v. St. Germans R. S. A.*, *ubi infra*; but there is nothing prohibiting a rural council from opposing a Bill.

The cost of promoting or opposing a local Bill in Parliament is chargeable on the district funds in the proportion the council may determine. (S. 2, Borough Funds Act, 1872.)

No payment is to be made out of these funds to a member of the council who has acted as counsel or Parliamentary agent in respect of the Bill. (S. 3, Borough Funds Act, 1872.)

Nor can the district funds be charged with the expenses incurred in proceeding by Bill for an object which was attainable by means of a L. G. B. Provisional Order. (S. 10, Borough Funds Act, 1872.)

Where a rural council, with the object of providing their district with a water supply, instructed their solicitor to take steps for promoting a Bill to enable them to acquire some land and rights of water, it was held that the council could not charge the costs payable to the solicitor to the local funds, and that the council ought to have proceeded by means of a L. G. B. Order under s. 176, P. H. Act, 1875, for acquiring the necessary land, &c. (*Clerceton v. St. Germans R. S. A.* (1886), 56 L. J. Q. B. 83.)

**PROCEDURE TO BE FOLLOWED BY COUNCIL WHEN PROMOTING
A BILL.**

When the Bill has been deposited, the council must give notice, by means of placards and by advertisements in a local newspaper in two successive weeks, stating: (a) the title of the Bill; (b) a brief statement of its objects; (c) that the Bill has been deposited, and the date on which it was first deposited in either House; (d) that copies of the Bill may be inspected and purchased, at some place in the district specified, for fourteen days after the first advertisement, and that extracts may be taken free of charge; and (e) that a public meeting of electors (*i.e.*, parochial electors) will be held on a day named—which must not be less than fourteen days nor more than twenty-eight after the first advertisement—for considering the promotion of the Bill; and the resolutions which will be submitted to the meeting must be indicated. (Art. 1.)

The first advertisement must be made within seven days from the first deposit of the Bill in either House, and the placards must be posted within the same time. (Art. 2.)

A public meeting of electors must be held in accordance with the notice. The chairman of the council is to preside; but if he is unwilling or unable to do so, the council may appoint a president. But if neither the chairman nor the person appointed by the council is present within ten minutes after the time appointed for the meeting, a president must be chosen from the electors present at the meeting. (Art. 3.)

The president may, with the consent of the majority of electors present, adjourn the meeting for not more than seven days. (Art. 4.)

On opening the meeting the president, or a member or officer of the council, is to give such explanation of the Bill as he thinks expedient. (Art. 5.)

The question of the promotion of the Bill must be put by the president to the meeting either by a single resolution in favour of the promotion of the whole Bill, or by separate resolutions in favour of separate clauses of the Bill.

The president must explain the resolution he proposes to put to the meeting, and the question of the promotion of the Bill must be put in the manner proposed.

If the meeting requests the president to put any resolution separately, he must do so. (Art. 6.)

The decision of the meeting on a resolution, as declared by the president, is to be final, unless a poll is demanded. (Art. 7.)

A poll may be demanded with respect to any resolution by not less than 100 electors, or one-twentieth in number of the electors, whichever is less; and if the decision of the meeting is against the resolution, the council can require a poll. (Art. 8.)

A requisition for a poll made by electors must be in writing and signed by them, and must be delivered to the chairman of the council within seven days after the meeting. (Art. 9.)

N.B.—A form of requisition has been settled by L. G. B. Order.

A requisition for a poll by the council must be authorised by a resolution of the council; and a copy of this resolution must be delivered to the chairman within seven days after the meeting. (Art. 10.)

The poll must then be taken on the resolution to which the requisition relates, unless the requisition, or the Bill, or any part of it in respect of which the requisition for a poll was made, is withdrawn. (Art. 11.)

The poll may be taken on any number of resolutions at the same time, and on the same voting paper. (Art. 12.)

The chairman must declare the result of the poll as soon as practicable after the counting of the votes. (Art. 13.)

His decision on any question arising in respect of a voting paper is to be final. (Art. 14.)

If he is unwilling to perform any duty in respect of a poll, the council must appoint some one else for the task. (Art. 15.)

The L. G. B. is given power by Art. 16 to make regulations for taking polls and for prescribing forms, which are contained in a L. G. B. Order, 1903. (Schedule I. of Borough Funds Act, 1903.)

If the result of the poll, or the decision of the meeting (and no poll is demanded), is against the promotion of the Bill, or any parts of it, the council must take the necessary steps to withdraw the Bill or those parts of it.

In the event of the votes being equal, the question is to be

deemed to be decided against the promotion. (S. 2, Borough Funds Act, 1903.)

No further expense must be incurred by the council in respect of a Bill or any part of it that is withdrawn. But all expenses incurred and incidental to it up to the time of its withdrawal, after being taxed by a taxing officer of one of the Houses of Parliament, and examined and allowed by the L. G. B. (S. 6, Borough Funds Act, 1872), can be charged to the local funds. (S. 3, Borough Funds Act, 1903.) If the requirements of the Act have been substantially complied with, an informality as to the giving of notices, or the procedure at the meeting, or the taking of the poll, which has not affected the result of the proceedings, will not render the charging of the expenses to the local funds invalid. (S. 6, Borough Funds Act, 1903.)

Qualifications and Disqualifications.

QUALIFICATIONS.

A person to be qualified to be an *urban* district councillor must (a) be a parochial elector of some parish within the district, or (b) must have resided in the district during the whole of the twelve months preceding his election to the council. (S. 23, Local Government Act, 1894.) A person to be qualified to be a *rural* district councillor must be qualified to be a guardian. (S. 24.) In rural districts the district councillors for a parish or other area are the representatives of that parish or area on the board of guardians.

N.B.—Though the member of a rural district council fulfils a double capacity, the functions of the two offices, councillor and guardian, are distinct.

A person to be qualified for election to a board of guardians must (a) be a parochial elector of some parish within the Poor Law Union, or (b) have resided in the Union for the whole of the twelve months preceding the election, or (c), in the case of a guardian for a parish wholly or partly within the area of a borough, he must be qualified for a borough councillorship. (S. 20, Local Government Act, 1894.) A person disqualified for being a guardian is also disqualified for being a rural district councillor. (S. 46, sub-s. 5, Local Government Act, 1894.)

A person ceasing to hold office as a district councillor is, unless otherwise disqualified, re-eligible. (S. 37, Municipal Corporations Act, 1882, adapted to district councils by s. 48, Local Government Act, 1894, and by Urban District Councils Election Order, 1898.)

N.B.—The parochial electors are the persons registered in such portion either of the local government register or of the parliamentary register of electors as relates to the parishes within the particular district. Persons entitled to be on the local government register are the occupiers of property.

A woman is entitled to be on the local government register, and to vote. But a husband and wife cannot both be qualified in respect of the same property. A woman can be a district councillor or a guardian. (S. 43, Local Government Act, 1894.)

Urban district councillors are elected by the parochial electors of the parishes in the district, and, if the district is divided into wards, by those electors who are registered in respect of qualifications in a ward. (S. 23, Local Government Act, 1894.)

Rural district councillors are elected by the parochial electors of parishes or other areas for the election of guardians in the district. The rural district councillor for any parish or other area is the representative of that area on the board of guardians. (S. 24, Local Government Act, 1894.)

The term of office of a district councillor is three years.

One-third, as nearly as may be, of the council (and if the district is divided into wards, one-third, as nearly as may be, of the councillors of each ward) must go out of office on the 15th April in each year.

The County Council, however, may, on the request made by means of a resolution of a district council, passed by two-thirds of the members voting on the resolution, order that all the councillors shall retire together on the 15th April in every third year. (S. 20, sub-s. 6; s. 23, sub-s. 6; s. 24, sub-s. 3, Local Government Act, 1894.)

The County Council, on a similar application being made, can rescind such an order by another order, which must, however, require all the councillors in office at the date of this second order to go out of office, and their places to be filled up by the

newly-elected councillors on the 15th April following. (District Councillors and Guardians Term of Office Act, 1900.)

DISQUALIFICATIONS.

A person is disqualified for being elected to or for being a member or chairman of a district council or a board of guardians if—

- (a) He is an infant or an alien.

N.B.—An alien is qualified on becoming a naturalised British subject.

- (b) He has, within twelve months before election, or has since election, received union or parochial relief. (S. 46, sub-s. 1, Local Government Act, 1894.)

N.B.—Relief given to or on account of a wife or child under the age of sixteen, such child not being blind or deaf and dumb, is to be considered as given to the husband or parent. (4 & 5 Will. 4, c. 76, s. 56.)

Certain specified forms of parochial relief are excepted from carrying a disqualification:—

Vaccination by the public vaccinator does not disqualify. (S. 26, Vaccination Act, 1867.) A person who has received for himself and his family surgical assistance or any medicine at the expense of the poor rate is not disqualified for being an urban district or borough councillor, but he cannot be a guardian. (S. 2, Medical Relief Disqualification Removal Act, 1885.) Treatment in an isolation hospital is not to disqualify. (S. 23, Isolation Hospitals Act, 1893.) A person who has availed himself of the apparatus (if any) provided by the council under the Cleansing of the Person Act, 1897, is not disqualified.

- (c) He has, within five years before his election, or has since his election, been convicted either on indictment or summarily of any crime, and sentenced to imprisonment with hard labour without the option of a fine, or to any greater punishment (*e.g.*, penal servitude), and has not received a free pardon. (S. 46, sub-s. 1, Local Government Act, 1894.)

A person therefore convicted and receiving a sentence of the character mentioned will be disqualified for five years from the

date of the conviction, unless he receives a free pardon, in which case the disqualification would cease immediately.

- (d) A person is also disqualified if he has, within five years before his election, or has since his election, been adjudged bankrupt, or has made a composition or arrangement with his creditors. (S. 46, sub-s. 1, Local Government Act, 1894.)

This disqualification, however, ceases at once on a debtor's adjudication being annulled, or on his getting his discharge, with a certificate to the effect that his bankruptcy was due to misfortune, and not to any misconduct on his part; and in the case of composition or arrangement with creditors, the disqualification will cease immediately on the payment of the debts in full. (S. 46, sub-s. 4, Local Government Act, 1894.) Otherwise, disqualification lasts five years from the adjudication, or from the date when the composition was made.

There is also a disqualification by virtue of s. 32 and s. 9 of the Bankruptcy Acts, 1883 and 1890 respectively. S. 32 disqualifies a person who is adjudged bankrupt for membership of a board of guardians, sanitary authority, borough council, and burial board, *inter alia*. S. 9 limits this disqualification to a period of five years from the date of the bankrupt's discharge.

In most cases, where discharge follows close upon adjudication, no difficulty would arise; but when a bankrupt's discharge is suspended (say) for two years, it is a doubtful point whether the period of his disqualification would date from the adjudication or from his discharge. S. 89 of the Local Government Act, 1894, repeals "so much of any Act . . . as is inconsistent with this Act"; but whether these provisions of the Bankruptcy Acts are inconsistent with the Local Government Act, 1894, and are therefore repealed, is not a matter on which there has been any decision of a Court.

"A composition is an arrangement by which the debtor gives and his creditors accept something which falls short of payment in full in satisfaction of the whole of the debt." (Hawkins, J., in *R. v. Cooban* (1886), 18 Q. B. D. 275; 56 L. J. M. C. 33.)

A debtor against whom judgment had been obtained, and who applied to the County Court for an administration order under s. 122, Bankruptcy Act, 1883, was held to have made a

composition with his creditors, and therefore to be disqualified under s. 46, Local Government Act, 1894. (*Bradfield v. Cheltenham Guardians* (1906), 75 L. J. Ch. 618.) Buckley, J., expressed the opinion that the words "composition or arrangement" were wide enough to cover every composition, however made, which the debtor had effected with his creditors, and did not refer exclusively to compositions made under the Bankruptcy Acts.

When a partnership makes an arrangement with creditors, the disqualification attaches to every member of the partnership. (*Ward v. Radford* (1895), 11 T. L. R. 587.)

- (e) He holds any paid office under the council or board of guardians, as the case may be. (S. 46, sub-s. 1, Local Government Act, 1894.)

N.B.—This disqualification only applies to membership of the particular body under which the paid office is held.

No person while holding office as assistant overseer, and no paid officer engaged in the administration of the poor law, can serve as a guardian. (S. 14, Poor Law Amendment Act, 1842.) Such person is therefore disqualified from being a rural district councillor.

A medical practitioner receiving a fee from the council for a certificate notifying an infectious disease is not disqualified. (S. 11, Infectious Disease Notification Act, 1889.)

- (f) He is concerned in any bargain or contract entered into with the council or board, or participates in the profit of any such bargain or contract, or of any such work done under the authority of the council or board. (S. 46, sub-s. 1, Local Government Act, 1894.)

The extent of interest in a contract with a council or board of guardians that will disqualify, is best illustrated by examples:—

A guardian who had collected rent due to the board, and had retained a small sum as commission, was held to have "participated in a profit," and to be disqualified—and none the less disqualified though he had refunded this sum before the board had declared his office vacant. (*R. v. Rowlands*, (1906) 2 K. B. 292; 75 L. J. K. B. 501.)

A member of a council who had lent money to a contractor and had taken as a security for his loan an assignment of a

contract which the contractor had with the council, was held to be disqualified. (*Hunnings v. Williamson* (1883), 11 Q. B. D. 533; 52 L. J. Q. B. 416.)

Where a gas-fitter entered into a contract with a council to make certain alterations in the town hall, and he employed one of the councillors, who was a builder, to erect the necessary scaffolding, this councillor was held to be disqualified. (*Tomkins v. Jolliffe* (1887), 51 J. P. 247.)

A councillor who had not resigned his post of chemist to the corporation before his election to the council, and who after his election supplied the fire brigade with four pennyworth of oil, was held by Cave, J., to be disqualified for voting at the mayoral election on the ground of being interested in a contract with the corporation; and to the objection that the amount of the bargain was trifling, the learned judge answered that the Court had no dispensing power. (*Nell v. Longbottom*, (1894) 1 Q. B. 767; 63 L. J. Q. B. 490.)

In a former case, Lopes, L.J., expressed a doubt as to whether disqualification would follow a trifling deal over the counter. (*Nutton v. Wilson*, (1889), 22 Q. B. D. 749; 58 L. J. Q. B. 443.)

A candidate for election who is disqualified at the date of his nomination, is disqualified for election even though he assigns his contract before the poll (*Harford v. Linskey*, (1899) 1 Q. B. 852; 68 L. J. Q. B. 599); and a resolution of the council, subsequent to the date of nomination, releasing a candidate from his contract with the council will not remove the disqualification. (*Ford v. Newth*, (1901) 1 K. B. 683; 70 L. J. K. B. 459.)

A person is still "concerned in" a contract, even though it has been completed, if he has not been paid. (*O'Carroll v. Hastings*, (1905) 2 Ir. 599.)

See *infra* (p. 295), as to exceptions from disqualification in the case of contracts of certain descriptions.

- (g) A person convicted of an offence against the Public Bodies Corrupt Practices Act, 1889, or the Corrupt and Illegal Practices Acts, 1883 and 1884, is disqualified for seven years from membership of a district council.

- (h) If a member of a district council (or board of guardians) is absent from meetings of the council for more than six months consecutively, except for illness or some other reason approved by the council (or board), his office becomes vacant. (S. 46, sub-s. 6, Local Government Act, 1894.)

N.B.—A person disqualified for being a guardian is also disqualified for being a rural district councillor, so a member of a rural district council who has been absent from the meetings of the board of guardians, so that his office of guardian will become vacant, will also have to vacate his office of district councillor, even though he may have attended the meetings of the council.

“Month” means a calendar month. The absence must begin to be reckoned after the first meeting from which the member was absent. So when a councillor was absent from a meeting on June 6th and was absent from all meetings up to November 21st, on which occasion he was present, it was held that he had not been absent for more than six months. (*Kershaw v. Mayor of Shoreditch* (1906), 22 T. L. R. 302.)

An officer or soldier of the auxiliary forces or of the reserve on active service is not to be disqualified by reason of absence. (Members of Local Authorities Relief Act, 1900.)

When a member becomes disqualified or vacates his seat for absence, the council (or board) must thereupon declare the office to be vacant, and signify that fact by a notice signed by three members and countersigned by the clerk. This notice must be published in such way as the council think fit, and then the office becomes vacant. (S. 46, sub-s. 7, Local Government Act, 1894.)

A person acting as a councillor or guardian when disqualified, or voting when prohibited, is liable on summary conviction to a fine of 20*l.* for each offence. (S. 46, sub-s. 8, Local Government Act, 1894.)

Anyone may prosecute, but the penalty will not go to the informer.

The only means of unseating a disqualified councillor who at the date of election is disqualified, is by an election petition.

A person is *not* disqualified by reason of being interested—

- (i) In the sale or lease of any lands ; or in the loan of any money to the council or board of guardians ; or in any contract with the council for the supply from land of which he is the owner or occupier, of stone, gravel, or other materials for making or repairing highways or bridges ; or for the transport of materials for the repair of roads and bridges in his own immediate neighbourhood. (S. 46, sub-s. 2, Local Government Act, 1894.)

A sale or lease of land *by* a council is within the exception ; as when a council leased a sewage farm to a member of the council, it was held that he was not disqualified for remaining on the council. (*R. v. Gaskarth* (1880); 5 Q. B. D. 324 ; 49 L. J. Q. B. 509.)

The letting of a building for the purpose of a polling-station for a municipal election was held to be a “lease of land” within the exception. (*Nell v. Longbottom*, *supra*.)

A district councillor must not vote on any question arising in pursuance of Part I. or II., Housing of the Working Classes Act, 1890, if it relates to any dwelling-house, building or land in which he is beneficially interested. •

There is a penalty of 50*l.* for so contravening this section. (S. 88, Housing of the Working Classes Act, 1890.)

- (ii) In any newspaper in which advertisements relating to the affairs of the council or board are inserted.
- (iii) In any contract with the council (or board of guardians) as a shareholder in a joint stock company ; but he must not vote on any question in which such company is interested, except that, in the case of a water company or other company established for the carrying on of works of a like public nature this prohibition against voting may be removed by the County Council. (S. 46, sub-s. 2, Local Government Act, 1894.)

It will be necessary for the councillor so interested to apply to the County Council for this dispensation.

Recreation Grounds.

Lands may be purchased or leased and laid out and maintained as public walks and pleasure grounds by an urban district council, who may also contribute to the support, or support such places which have been provided by some other person. The council can make bye-laws for the regulation of such places which may provide for the removal of persons infringing the bye-laws by an officer of the council or by a constable. (S. 164, P. H. Act, 1875.)

In those districts where Part III. of the P. H. Act, 1890, has been adopted the council have further powers: they can contribute towards the cost of laying out public walks and pleasure grounds which have been permanently set apart as such by some person, and towards the purchase of lands by a person if they are to be set apart for public recreation; nor does it matter if these lands are outside the district, if they are so situated as to be conveniently used by the inhabitants of the district. (S. 45, P. H. Act, 1890.)

The council may, on not more than twelve days in one year nor for more than four consecutive days, close to the public any park or pleasure ground provided by them, and may grant the use of it, gratuitously or for payment, to any public charity or institution, or for an agricultural or other show, or for any public purpose. The persons to whom the place is granted may charge for admission to it if the council so consent. But no such park or pleasure ground must be closed on a Sunday or public holiday.

The council may either themselves provide and let for hire, or may license other persons to do so, pleasure boats on any lakes in a public park or pleasure grounds. Bye-laws may be made for regulating the numbering and naming of such boats, the number of persons to be carried in them, the boat-houses and mooring places, and for fixing the rates of hire and the qualifications of the boatmen. (S. 44, P. H. Act, 1890.)

N.B.—The above provisions only apply to urban districts, but the L. G. B. can invest a rural council with like powers. Rural councils, as well as urban, can acquire open spaces to be

used for the purposes of public recreation, however, under the Open Spaces Act, 1906 (*infra*).

In districts where Part VI., P. H. Act, 1907, is in force, the district council, in addition to other powers, and subject to any regulations made by the L. G. B. in pursuance of s. 76 of the Act, have the following powers with respect to any public park or pleasure ground provided by the council or under their management and control :—

- (a) To enclose during a frost any part of the ground for the purpose of protecting ice for skating and to charge admission to the part enclosed, but only on condition that three-quarters of the ice available for skating is open to the use of the public free of charge.
- (b) To set apart part of such ground, as may be described on a notice board, for the purpose of cricket, football or other game, and to exclude the public from this part while it is in actual use.
- (c) To provide any apparatus for games, and charge for the use, or let the right of providing such apparatus for a term not exceeding three years.
- (d) To provide or contribute towards the expenses of a band of music to perform in the pleasure ground. (See *infra* as to limit on expense to be incurred over a band.)
- (e) To enclose any part, not exceeding one acre, for the convenience of persons listening to the band, and charge admission to the enclosure.
- (f) To place, or authorize any person to place, chairs or seats in the ground, and charge for, or authorize any person to charge for, their use.
- (g) To provide and maintain reading-rooms, pavilions, or other buildings and conveniences, and to charge for admission to them ; but in the case of a reading-room this charge must not be made on more than twelve days in the year, nor on more than four consecutive days.
- (h) To let any pavilion or other building provided by the council to any person for the purpose of entertainments, and authorize such person to charge for admission.

- (i) To provide and maintain refreshment rooms in the ground, and either manage them themselves or let them to any person for a term not exceeding three years. (S. 76, P. H. Act, 1907.)

The council can appoint officers for securing the observance of this Part of the Act and of any regulations or bye-laws made under it. The council can procure officers to be sworn in as constables for the purpose, but no such officer is to act as a constable unless in uniform or provided with a warrant. (S. 77, P. H. Act, 1907.)

No powers given by s. 76 are to be exercised so as to contravene any covenant or condition to which the gift or lease of a public park or pleasure ground has been made subject, without the consent of the persons entitled to the benefit of such covenant or condition.

The expenses incurred in the exercise of the powers given by this section are to be defrayed out of the fund or rate from which the expenses of the park or ground are payable, and any receipts arising from the exercise of these powers are to be carried to the credit of that fund or rate.

With regard to a band, the expenses incurred by the council must not exceed in one year an amount to be approved by the L. G. B., and must not exceed the amount producible by a rate of a penny on the property assessed for the purpose of the rate out of which the expenses of the park or ground are paid. (S. 76, P. H. Act, 1907.)

N.B.—Ss. 76 and 77, P. H. Act, 1907, are only in force in districts to which Part VI. of the Act has been applied by order of the L. G. B.

A recreation ground is also to be deemed an open and public place for the purposes of the Vagrancy Act, 1824, and for certain specified purposes of the Towns Police Clauses Act, 1847, ss. 28 and 29. (S. 81, P. H. Act, 1907.)

N.B.—This section only applies in districts to which it or Part VII., P. H. Act, 1907, has been applied by order of a Secretary of State.

The Open Spaces Act, 1906, consolidates the former enactments relating to open spaces and their acquisition by urban

and rural district councils for the purpose of public recreation and enjoyment.

An "open space" is defined as any land, whether enclosed or not, on which there are no buildings, or of which not more than one-twentieth is covered by buildings, and which is land laid out as a garden, or is used for purposes of recreation, or lies waste. The definition is very wide; it also includes a garden square and a disused burial ground or churchyard. (S. 20.)

The district council can acquire from the owner by agreement an open space or burial ground for public recreation. The freehold, or a limited interest, or merely the management of the place may be acquired; and it may be for a valuable or nominal consideration or by gift. The place may be within or without the district. (S. 9.) Two local authorities, *i.e.*, County Council, borough council, district council (and a parish council if invested by the County Council with the requisite power) may combine for the purpose. (S. 16.)

The "owner" of a disused burial ground, who can transfer it to the district council, is the person (or persons) in whom the freehold is vested, whether as appurtenant to any benefice or otherwise. (S. 20.) The incumbent of a church is the freeholder of the churchyard.

A "disused burial ground" means any burial ground, churchyard or cemetery no longer used for interments, whether it has been closed wholly or partially under any statutory provisions or by Order in Council. (S. 20.)

Trustees of land to be preserved as an open space (s. 2), or held upon trust for purposes of recreation (s. 3), or for charitable purposes (s. 4), can transfer it to the district council, to be held by them subject to the conditions of the trust and for the purposes of the trust.

The owner of an open space, *e.g.*, a garden square, which is subject to the right of user for recreation by the owners and occupiers of the houses round or near it, may, with the consent of those persons, transfer it or its management to the district council for the use of the public. This consent must be given through a special resolution at a meeting of the owners and occupiers, and s. 8 of the Act prescribes the formalities that must be observed in the matter; but this concerns rather the

owners and occupiers of the houses, and not the district council. (S. 5.)

The council must pay compensation to any person, unless he consents, deprived of any interest of a profitable or beneficial nature in an open space or burial ground acquired by the council. (S. 13.)

The council can enclose with suitable rails and gates an open space or burial ground acquired by them, and they may drain, level, plant, ornament, light it and provide it with seats. (S. 10.)

In the case of a disused burial ground, however, no powers of management must be exercised by the council with reference to *consecrated ground* without a license or faculty of the bishop of the diocese. (S. 11.) The license or faculty can be granted subject to such restrictions as the bishop thinks fit. (S. 11, sub-s. 5.)

No buildings must be erected on a disused burial ground. (Disused Burial Grounds Act, 1884.)

No games must be played on a disused burial ground without (a) in the case of consecrated ground, the bishop's license or faculty; or (b) in the case of unconsecrated ground, the sanction of the persons from whom it has been acquired, and subject to the conditions they may impose. (S. 11, sub-s. 2.)

Tombstones or monuments on consecrated ground must not be removed or have their position changed without the license or faculty of the bishop. (S. 11, sub-s. 4.) At least three months before moving any tombstones from a disused burial ground acquired by them, the council must—

- (a) Prepare a statement of the names and dates on the tombstones, which statement must be deposited with the clerk and be open to inspection;
- (b) Insert an advertisement at least three times in some local newspaper of the proposed removal of the tombstones, and intimating where and when the statement of names and dates is deposited and can be inspected;
- (c) Place a notice in terms similar to the advertisement on the door of the church (if any) to which the burial ground is attached, and deliver a notice to any person known or believed by the council to be a near relative to anyone whose death is recorded on a tombstone. (S. 11, sub-s. 3.)

The council cannot apply for the bishop's faculty until after one month after the appearance of the last of the above-mentioned advertisements. There is a proviso, which recognizes that it may be impossible for the council to discover any near relatives on whom to serve the notice required by para. (c), that the bishop may grant the necessary faculty or license if satisfied that reasonable steps have been taken to bring the intended removal of tombstones to the knowledge of any persons having a family interest in them. (S. 11, sub-s. 4.)

Bye-laws, to be approved by L. G. B., can be made by the council for regulating the use of these open spaces, for fixing the days and hours of admission, &c. (S. 15.)

The necessary officers and servants for the care of these places can be employed by the council. (S. 10.)

A district council's expenses under this Act will be defrayed as under the P. H. Act, 1875. The expenses of a rural district council are to be deemed "special" expenses. (S. 17.) A council have the same powers of borrowing as under the P. H. Act, 1875. (S. 18, Open Spaces Act, 1906.)

Rivers Pollution.

A district council, in the exercise of their powers under the P. H. Act, 1875, cannot make or use a sewer, &c. so as to convey sewage or filthy water into any natural stream, canal or pond, until it has been freed from all excrementitious or other noxious matter that would affect or deteriorate the water in such stream, &c. (S. 17, P. H. Act, 1875.) The section means that at no one point is the water of the stream to be affected or deteriorated by such matter being put into it. (*A.-G. v. Birmingham, &c. Drainage Board* (1908), 72 J. P. 21.)

It is an offence against the Rivers Pollution Prevention Act, 1876, to put or to knowingly permit to be put into a stream any sewage (s. 3, Rivers Pollution Prevention Act, 1876); and when a stream is polluted by sewage, and the sewage has at any point of its flow passed through a channel or pipe vested in the district council, the council will be deemed to have knowingly permitted the sewage to flow into the stream. (S. 1, Rivers Pollution Prevention Act, 1893.) If there is an appreciable

pollution through sewage being permitted to flow into the stream, it is no answer to proceedings for an order prohibiting the pollution that the stream is already polluted by sewage flowing into it elsewhere. (*Staffordshire C. C. v. Seisdon R. D. C.* (1907), 96 L. T. 328.)

“Pollution” does not include discolouration.

“Stream” includes rivers, canals, lakes and watercourses (except watercourses which were mainly used as sewers and which emptied into the sea at the time this Act was passed), also such parts of the sea and of tidal waters as may be determined by the L. G. B. by Order published in the *London Gazette*. (S. 20, Rivers Pollution Prevention Act, 1876.)

“Tidal waters” are those “which rise and fall, not because they have come up from the sea or estuary and must flow down again, but because when flowing down from their source towards the sea they are arrested in their course and compelled to rise by the action of the tide properly so called, and fall when that pressure is withdrawn.” (*Darling, J., West Riding of Yorks. Rivers Board v. Tadcaster R. D. C.* (1907), 71 J. P. 429.)

If a council have been empowered by Act of Parliament to discharge sewage into the sea or tidal waters, they will not be deemed to have offended against this Act. (S. 19, Rivers Pollution Prevention Act, 1876.)

Though the L. G. B. has not made any order under s. 20 including any part of the sea or tidal waters in the definition of a “stream,” a council will be restrained from discharging sewage so as to cause injury to a “several” fishery, *e.g.*, oyster beds (*Hobart v. Southend-on-Sea Corporation* (1906), 75 L. J. K. B. 305), and will be liable for any loss caused thereby to the owner of the fishery. (*Foster v. Warblington U. D. C.*, (1906) 1 K. B. 648; 75 L. J. K. B. 514.)

N.B.—Under the Sea Fisheries Regulation Act, 1888, the Board of Trade can, on the application of a County Council or borough council, appoint a local fishery committee, with powers (*inter alia*) to make bye-laws for prohibiting or regulating the deposit or discharge into the sea of any solid or liquid substance detrimental to sea-fish or sea-fishing.

In districts where s. 47, P. H. Act, 1890, is in force (this section cannot be adopted by a rural council), it is an offence,

carrying a penalty of 40s., to throw into a river or watercourse any cinders, bricks, stones, rubbish, dust or other matter which is likely to cause annoyance. (S. 47, P. H. Act, 1890.)

It is an offence against the Rivers Pollution Act to put or knowingly permit to be put into a stream solid refuse, cinders or putrid solid matters so as, either singly or in combination with other similar acts by the same or other persons, to interfere with the due flow or to pollute the water of the stream. In proceedings under this Act, in order to prove interference with the flow of the stream or the pollution by reason of solid matters having been put into it, evidence may be given of repeated acts which together cause the interference or pollution, though each act taken separately would not be sufficient. (S. 2, Rivers Pollution Prevention Act, 1876.)

"Solid matter" does not include particles of matter in suspension in water. (S. 20, Rivers Pollution Prevention Act, 1876.) This definition is explained in *Ribble Joint Committee v. Halliwell*, (1899) 2 Q. B. 385; 68 L. J. Q. B. 984. A manufacturer impounded in a reservoir water from the river, but owing to the presence of vegetable substances which had been turned into the river from mills higher up the stream, this water could not be used until these substances had had time to settle. The water in the reservoir was then drawn off and used in the factory. The deposit which settled at the bottom of the reservoir in a short time became "putrid solid matter," and once a week the reservoir was flushed and the deposit washed into the river. A sample of the effluent from the reservoir where it went into the river was analysed as consisting of 97·6 per cent. water and 2·4 per cent. solids. It was held that no offence had been committed, as the deposit, when it was turned into the river, was so mixed with water as to consist of "particles in suspension in water."

It is an offence against the Act to put or knowingly permit to be put into a stream polluting liquids from factories or manufacturing processes. But in the case of factories which were turning polluting manufacturing liquids into a stream at the time when the Act was passed, no offence is to be deemed to be committed if the manufacturer satisfies the Court that he is using the best practicable and reasonably available means for

preventing pollution. (S. 4, Rivers Pollution Prevention Act, 1876.) This exemption only refers to noxious liquids produced in the process of a manufacture, and it does not apply to factories established after 1876. (*Midlothian C. C. v. Pumpherton Oil Co.* (1904), 6 Fraser, 387.)

It is also an offence to put into a stream solid matters from a mine so as to prejudicially affect the flow, or solid or liquid pollutions from a mine. But water in the same condition in which it has been drained or raised from a mine may be turned into a stream, although it may prejudicially affect the flow or cause pollution. And in the case of polluting matter, no offence is committed if the mine-owner satisfies the Court that the means he is using for rendering the matter innocuous are the best practicable and reasonably available. (S. 5, Rivers Pollution Prevention Act, 1876.)

A certificate granted by a L. G. B. inspector after holding an inquiry that the means used for rendering pollutions innocuous from factories or mines are the best practicable and reasonably available is conclusive evidence of the fact in any proceedings. The certificate may be granted for a period not exceeding two years. Any person (which of course would include the local authority) aggrieved by the grant or refusal of a certificate can appeal to the L. G. B. against the inspector's decision. (S. 12, Rivers Pollution Prevention Act, 1876.)

The district council (s. 8, Rivers Pollution Prevention Act, 1876) and the County Council or a joint committee of County Councils formed by L. G. B. Order (s. 14, Local Government Act, 1888) are the local authorities for enforcing the provisions of the Act in relation to any stream within their jurisdiction. A council's expenses in the matter are to be defrayed as if incurred under the P. H. Act, 1875. But any person aggrieved by the pollution of a stream (except in the case of factory or mine pollutions) can take proceedings under this Act. (S. 8.) And further, the Act does not deprive riparian owners and others of their Common Law rights in respect of the pollution of streams, whatever the manner in which the pollution is caused. (S. 16, Rivers Pollution Prevention Act, 1876.)

The Lee Conservancy Board has the exclusive right of en-

forcing the Act in relation to all streams within the Board's jurisdiction. (S. 9, Rivers Pollution Prevention Act, 1876.)

A local authority only can take proceedings under the Act in the case of factory and mine pollutions. Any other person cannot. But if the local authority, on being informed by any person of such a pollution, fail to proceed in the matter, that person can apply to the L. G. B., and the L. G. B., after an inquiry, can direct the local authority to take proceedings.

The local authority cannot take proceedings with regard to factory or mine pollutions without the consent of the L. G. B. This consent can only be given after the L. G. B. has held an inquiry, and must not be given when the district is the seat of a manufacturing industry, unless the Board is satisfied that there are means reasonably available and practicable for rendering the pollutions harmless, and that no material injury will be inflicted on the industry. (S. 6, Rivers Pollution Prevention Act, 1876.)

Proceedings can only be taken against a person for the same offence by one local authority at a time. In the case of any offence against the Act, the local authority must give the offender two months' notice in writing of their intention to proceed against him. (S. 13, Rivers Pollution Prevention Act, 1876.) In the case of factory or mine pollutions this notice can only be given after the necessary consent of the L. G. B. has been obtained, and a notice given prior to the L. G. B.'s consent will be invalid. (*West Riding of Yorks. Rivers Board v. Robinson*, (1907) 1 K. B. 431; 76 L. J. K. B. 426.) The person on receiving this notice may make his objection to the proposed proceedings before the local authority, even though the L. G. B. has given its consent, and the local authority must give him and his witnesses a hearing before deciding whether to proceed against him. (S. 13, Rivers Pollution Prevention Act, 1876.)

Proceedings under the Act must be taken in the County Court. The Court can, by summary order, require a person to abstain from committing an offence, and when such offence consists in a default to perform a duty under this Act, *e.g.*, failure by the district council to afford facilities for factories to empty manufacturing liquids into the council's sewers, the

Court can require that duty to be performed in the manner specified in the order. Non-compliance with the order of the Court entails a penalty of 50% a day. (S. 10.) A plaint entered in the County Court may be removed into the High Court by leave of a High Court judge. There is, also, an appeal from an order of a County Court judge to the High Court. The appeal must be in the form of a special case. (S. 11, Rivers Pollution Prevention Act, 1876.)

A person (person includes a company) engaged in the manufacture of gas who causes the water in a stream, reservoir, pond, or any drain or pipe communicating therewith, to be corrupted by gas washings or other substance produced in the making or supply of gas, is liable for every offence in the sum of 200%, and, after receiving twenty-four hours' notice of the offence from the council or the person to whom the water belongs, a further sum of 20% for every day the offence continues. These penalties are not recoverable unless sued for during the continuance of the offence or within six months after it has ceased. They are recoverable in any of the superior Courts, with full costs of suit, in the case of water belonging to the district council, by the council, and in the case of other water, if the owner does not proceed, by the district council on the council giving notice to the owner of their intention to take proceedings. (S. 68, P. H. Act, 1875.)

The Cemeteries Clauses Act, 1847, contains provisions similar to the above in the case of pollutions from cemeteries.

Scavenging.

A district council can undertake (i) the cleansing of footways and pavements adjoining premises; (ii) the removal of house refuse from premises; (iii) the cleansing of earth-closets, privies, ash-pits, and cesspools belonging to premises.

If the council do not undertake or contract for the performance of such duties, they can make bye-laws for these duties to be performed by the occupier of the premises at such intervals as the council think fit. (S. 44, P. H. Act, 1875.)

In districts where s. 26, sub-s. 2, of Part III., P. H. Act, 1890, has been adopted, and where the council undertake or

contract for the removal of house refuse, the council can make bye-laws imposing on the occupiers of premises the duty of facilitating the work of removal. (S. 26, sub-s. 2, P. H. Act, 1890.)

N.B.—Refuse from a hotel, consisting of ashes, lemon peel, empty bottles, &c., was held to be "house refuse" (*Westminster Corporation v. Gordon Hotels*, (1906) 2 K. B. 39; 75 L. J. K. B. 438); but not so clinkers from a steam laundry. (*London and Provincial Laundry Co. v. Willesden L. B.*, (1892) 2 Q. B. 271.)

In districts where s. 48 of Part III., P. H. Act, 1907, is in force, the council, on being requested by the owner or occupier of any premises to do so, must remove trade refuse other than sludge. The person making the request must pay the council a reasonable sum for so doing. The amount to be paid must, in case of dispute, be settled by a Court of summary jurisdiction; and if any question arises in any case as to what is to be considered as trade refuse, that question may be decided on the complaint of either party by a Court of summary jurisdiction, whose decision is to be final. (S. 48, P. H. Act, 1907.)

An urban council may provide receptacles for the temporary deposit and collection of dust and rubbish, and also buildings and places, *e.g.*, dust destructors, for the deposit of rubbish collected by the council. (S. 45, P. H. Act, 1875.)

Sewers, Drains, Sanitary Arrangements.

DISTINCTION BETWEEN A "DRAIN" AND A "SEWER."

A "drain" is "any drain of and used for the drainage of one building only, or premises within the same curtilage, and made merely for the purpose of communicating therefrom with a cesspool, or other like receptacle for drainage, or with a sewer." (S. 4, P. H. Act, 1875.)

A pair of semi-detached houses which had been built at the same time, which had separate gardens, and which had always been separately occupied, were held to be separate buildings not within the same curtilage. (*Humphery v. Young*, (1903) 1 K. B. 44; 72 L. J. K. B. 6.) "Curtilage" means the garden, yard, or enclosure belonging to the building. The term

"curtilage" cannot be applied to anything which is common to more than one house. (*Per* Phillimore, J., *Harris v. Scurfield* (1904), 91 L. T. 536.) In this case a block of separate dwellings with a common access and a certain amount of privy accommodation in common were held not on that account to be premises within the same curtilage.

The Lowther Arcade, too, was held not to be "one building" or "premises within the same curtilage." (*St. Martin's Vestry v. Bird*, (1895) 1 Q. B. 428; 64 L. J. Q. B. 230.)

A "sewer" includes a sewer or drain of any description except a drain to which the above definition of "drain" applies. (S. 4, P. H. Act, 1875.) The definition may be summed up as follows: A pipe or conduit (to use a neutral term) is a "drain" if it conducts the drainage from one building only or from premises within the same curtilage, and a "sewer" if it conducts the drainage from more than one building not being within the same curtilage.

The distinction is important, because "sewers" (with certain exceptions) are repairable by the district council, whereas a "drain" is repairable by the owner or occupier of the house using it. As to when a sewer is to be treated as a "drain," see s. 19, P. H. Act, 1890, *infra*.

The term "sewer" is not confined to conduits which receive faecal matter only, but includes a system for carrying off surface water from roads. (*Durrant v. Branksome U. D. C.*, (1897) 2 Ch. 291; 66 L. J. Ch. 653.)

A channel at the side of a road for carrying off surface water drainage, which also received the rain water from the roofs of the houses abutting on the road, and conveyed the water through gratings into a sewer under the road, was held to be a "sewer." (*Wilkinson v. Llandaff R. D. C.*, (1903) 2 Ch. 695; 72 L. J. Ch. 8.)

A burn which for many years had received the sewage of a number of houses and had become very filthy, was held to be a "sewer" (*Falconer v. South Shields Corporation* (1895), 11 T. L. R. 223); but it is a question of fact in each case, and the mere fact that sewage has been allowed to discharge into a stream does not make the stream a "sewer." (*West Riding of Yorks. Rivers Board v. Gaunt* (1903), 1 L. G. R. 133.)

A cesspool is not a "sewer." (*Meader v. West Cores L. B.*, (1892) 3 Ch. 18; 61 L. J. Ch. 561.)

In districts where Part III. of the P. H. Act, 1890, has been adopted, a construction which, according to the definition in s. 4, P. H. Act, 1875, is a "sewer" is to be treated as a "drain" for the purposes of s. 19 of the P. H. Act, 1890.

This s. 19 provides that where *two or more houses* belong to *different owners* and are connected with a *public sewer* by a *single private drain*, that single private drain, if found to be defective, is repairable at the expense of the owners of the houses.

The council can serve a written notice on the owners or occupiers of the houses calling on them to effect the necessary repairs. If they make default, the council can execute the necessary work and recover their expenses from the owners of the houses in such proportions as are settled by the surveyor, or, in case of dispute, by a Court of summary jurisdiction. These expenses may be recovered summarily, or be declared by the council to be "private improvement expenses."

The expenses must be apportioned by the surveyor before the council can recover them from the owners. (*Haedicke v. Friern Barnet U. D. C.*, (1904) 2 K. B. 807.)

It is an anomaly that the section should only apply when the houses belong to different owners. But the section does not mean that each house should be in a separate ownership. (*Per Channell, J.*, in *Thompson v. Eccles Corporation*, (1905) 1 K. B. 110; 74 L. J. K. B. 130.)

"The 'public sewer' is meant here to indicate a sewer which serves the public generally whereas the 'private drain,' serving two or more houses, is that of which the natural use is confined to those houses." (Wills, J., *Eastbourne Corporation v. Bradford*, 65 L. J. Q. B. 571.)

"What, then, is the 'single private drain' to which s. 19 applies? I think it is a drain constructed on private ground to which the public have no access. The public are relieved by the section from the cost of repairing that which they cannot use." (Cave, J., *Seal v. Merthyr Tydvil U. D. C.*, (1897) 2 Q. B. 543; 67 L. J. Q. B. 37.)

Two cases illustrating s. 19 follow:—

Jackson v. Wimbledon U. D. C., (1905) 2 K. B. 27; 74

L. J. K. B. 641. Of a row of sixteen houses, Jackson owned twelve (Nos. 51—73). The remaining four houses (Nos. 75—81) belonged to two other owners. At the back of the houses, on private ground, ran a pipe, A. B., into which each house drained separately. Between No. 73 (the last of Jackson's houses) and No. 75, under some vacant private ground, there ran at right angles to the pipe A. B. a connecting pipe, which conveyed the sewage from the pipe A. B. into the public sewer under the road in front of the houses. This connecting pipe was admitted to be a "single private drain" connecting with the "public sewer." On complaint being made to the council, the surveyor found that the pipe A. B. was out of repair, and served notices on Jackson and the other owners to effect the necessary works. The two owners of Nos. 75—81 made good that part of the pipe A. B. into which their four houses drained—there was no dispute as to their liability, because that part of the pipe received the drainage of *two or more houses belonging to different owners, and was connected by a single private drain with a public sewer*. Jackson disputed his liability on the ground that that part of the pipe A. B. into which his twelve houses drained was a sewer. The Court held that it was a "sewer," and that the council could not recover the expenses of repairing it from Jackson. "It is of no use," said Collins, M.R., "for a local authority to point to repairs effected on a pipe which is not, at the place where the repairs were effected, a single private drain; and the local authority cannot bring that pipe within the definition of a single private drain merely by virtue of the fact that that pipe ultimately falls into a single private drain, and that the sewage from it is carried on a part of its course through a private single drain."

In *Wood Green U. D. C. v. Joseph*, (1907) 1 K. B. 182; 76 L. J. K. B. 173, a row of houses, in different ownerships, all drained in pairs by means of a Y-shaped arrangement of pipes into a single pipe A. B. in private ground, which in turn communicated with the district council's sewer. It was admitted that each pipe forming the tail of the Y was a sewer. The dispute was as to the liability to repair the single pipe A. B. It was held that the council were liable, as the conditions required by s. 19 to put the liability on the owner of the house

were not fulfilled in this instance. "There is no connection with the public sewer by a single private drain; but the connection is by a sewer passing into a single private drain and thence into the public sewer." (Collins, M.R.)

All sewers, with three exceptions, within the district, together with all the buildings, works, materials belonging to the sewers, vest in and are under the control of the district council. (S. 13, P. H. Act, 1875.) But a person who finds a drain in a highway and turns his sewage into it, does not thereby make it a sewer, so as to throw on the local authority the liability for any nuisance that follows; and it seems that a person has no right to empty slops or other dirty matter into a sewer only used for conveying surface water. (*Kinson Pottery Co. v. Poole Corporation*, (1899) 2 Q. B. 44; 68 L. J. Q. B. 819.) And if a person surreptitiously runs a pipe through another person's land, he cannot make it a sewer so as to vest in and be repairable by the district council. (*Hedley v. Webb*, (1901) 2 Ch. 126; 70 L. J. Ch. 663.)

"Buildings, works, materials belonging to sewers," includes man-holes, inspection chambers, &c.

"Vest in" means "not a giving of the property in the sewer, and in the soil surrounding it, to the local authority, but giving such ownership and such rights only as are necessary for the purpose of carrying out the duties of the local authority." (Lord Russell of Killowen, C.J., *Eastbourne Corporation v. Bradford*, (1896) 2 Q. B. 205; 65 L. J. Q. B. 571.)

The three exceptions of sewers that do not vest in and come under the control of the district council are—

(i) Sewers made for profit.

When the object of making the sewer is not either for sanitary or ordinary drainage purposes, but to enable land to be occupied more profitably (*e.g.*, agricultural drains), or to avoid an expenditure which would otherwise have to be incurred in order that the occupation of the land may be equally beneficial, the sewer is made for the profit of the occupier. (*Per Stirling, J., Croysdale v. Sunbury-on-Thames U. D. C.*, (1898) 2 Ch. 515; 67 L. J. Ch. 585.) In this case the tenant of land had made a sewer for carrying surface water to a pond for watering his cattle.

But where a landowner, as part of the development of a building estate, made sewers in order to enhance the value of the estate, which he let out in building plots, it was held that the sewers were not made for profit, for to bring them within the exception would make "the exception eat up the rule." (*Vowles v. Colmer* (1895), 64 L. J. Ch. 414.)

The word "profit" is not restricted to a direct money payment (*Sykes v. Sowerby U. D. C.*, (1900) 1 Q. B. 584; 69 L. J. Q. B. 464); in which case a conduit for preventing surface water from running into and flooding a quarry, which water was not used by the quarry owner, was held not to be a sewer made for profit.

(ii) Sewers made and used for the purpose of draining, preserving, or improving land under any local or private Act of Parliament, or for the purpose of irrigating land. Drains and ditches made by a railway company under their special Act, which incorporated the Railways Clauses Consolidation Act, 1845, are sewers made under a private Act. (*L. & N. W. Rail. Co. v. Runcorn R. D. C.*, (1898) 1 Ch. 561; 67 L. J. Ch. 324.)

(iii) Sewers under the authority of any Commissioners of Sewers appointed by the Crown. (S. 13, P. H. Act, 1875.) S. 13 contains the proviso preserving sewers that have been constructed by or transferred to any sewage board or other authority, under any Act of Parliament, before the passing of the 1875 Act under the control of that board or authority.

The use of sewers (though vested in the district council) which are used in connection with the draining of main roads is preserved for that purpose to the County Council. (S. 11, sub-s. 6, Local Government Act, 1888.)

COUNCIL'S POWERS AND DUTIES WITH REGARD TO SEWERS.

The district council may purchase any sewers which do not vest in them, or the right to make or use a sewer. But anyone who had the right to use the sewer before its purchase by the

council is to have the same right afterwards to use that sewer or any other sewer substituted for it. (S. 14, P. H. Act, 1875.)

The district council must keep in repair all sewers belonging to them, and must make such sewers as are necessary for effectually draining the district. (S. 15, P. H. Act, 1875.)

The proper course to be followed when the council neglect this duty to keep sewers in repair, or to provide an effective sewerage system, is to apply to the L. G. B. under s. 299, P. H. Act, 1875. No action will lie against the district council for non-fulfilment of their duty to provide necessary sewers (*Pasmore v. Oswaldtwistle U. D. C.*, (1898) A. C. 387; 67 L. J. Q. B. 635); though, of course, the local authority will be liable in an action for damage due to the improper construction of a sewer or use of a sewer, *e.g.*, where the local authority made sewers which polluted a lake, injuring the fishing and water supply of a house. (*Harrington v. Derby Corporation*, (1905) 1 Ch. 205; 74 L. J. Ch. 219.)

If the County Council are satisfied, on the complaint of the parish council, that a rural district council have made default in providing the parish with sufficient sewers or in maintaining the existing sewers, the County Council can undertake the district council's duties at the district council's expense. (S. 16, Local Government Act, 1894.)

The duty imposed by s. 15 does not mean that the council are bound to provide a sewer for every house in the district, *e.g.*, for an outlying cottage (*per* Channell, J., *Kinson v. Poole Corporation*, (1899) 2 Q. B. 44; 68 L. J. Q. B. 819). A council cannot evade their obligation to provide sufficient sewers; and where a number of houses drained into a sewer and, owing to its insufficiency, a nuisance was created, it was held that the local authority could not call on the householders to disconnect their drains with the sewer, so as to abate the nuisance. (*Fordom v. Parsons*, (1894) 2 Q. B. 780; 64 L. J. M. C. 22.)

A rural district council, by resolution to be approved by the L. G. B., may constitute any portion of their district a "special drainage district" for the purpose of charging on it exclusively the expenses of works of sewerage (*inter alia*) in that area. That area will thereupon become a contributory place. (S. 277, P. H. Act, 1875.)

When the rural district council have determined to adopt plans for the sewerage of any contributory place, they must give notice to the council of the parish where the works are to be executed and before any contract for the carrying out of the works is made by the district council. (S. 16, Local Government Act, 1894.)

The district council must keep their sewers properly cleansed, emptied and ventilated, so that they do not create a nuisance. (S. 19, P. H. Act, 1875.) There is a distinction between the council's duties under this section and under s. 15, *supra*. S. 299 (*supra*) does not touch the council's duty under this section, and if they neglect to cleanse a sewer and a nuisance is created, the persons who suffer from it have a right of action against the council. (*Baron v. Portslade U. D. C.*, (1900) 2 Q. B. 588; 69 L. J. Q. B. 899.)

The council can carry a sewer through, across or under a road or street, or any place intended for a street; or under a cellar or vault which is beneath the pavement or carriage-way of a street; or, after giving reasonable notice in writing to the owner or occupier, and if on the report of their surveyor it appears necessary, they may carry a sewer into, through or under any lands whatsoever in the district. (S. 16, P. H. Act, 1875.)

"Into, through or under" does not mean that the sewer must be wholly underground. (*Roderick v. Aston L. B.* (1877), 5 Ch. D. 328; 46 L. J. Ch. 802.)

N.B.—A sewer can be carried by the council under a street or under a cellar which is below the pavement or carriage-way of the street without having to give notice to the owner of the street or of the vault. But notice in writing to the owner or occupier and a report of the necessity of the work from the surveyor are necessary when a sewer is to be carried into or under any building or private lands.

"Lands" includes buildings (s. 4, P. H. Act, 1875) and also land covered by water. (*Durrant v. Branksome U. D. C.*, (1897) 2 Ch. 291; 66 L. J. Ch. 653.)

The surveyor on whose report the council are to act must be the surveyor appointed by the council under s. 189 or ss. 190 and 192, P. H. Act, 1875, and not a person temporarily appointed to discharge the duties of surveyor during a vacancy

in the office. (*Levis v. Weston-super-Mare L. B.* (1888), 40 Ch. D. 55; 58 L. J. Ch. 39.)

A manhole is a "work" which may be constructed on private property by virtue of this section (*Sicanston v. Twickenham L. B.* (1879), 11 Ch. D. 838; 48 L. J. Ch. 623), but a pumping-station is not. (*King's Coll., Camb. v. Uxbridge R. D. C.*, (1901) 2 Ch. 768; 70 L. J. Ch. 844.) This latter is a work "for the purpose of disposing of sewage" within the meaning of s. 27 (*infra*, p. 316), and the local authority must get the land required for it by purchase or lease as provided by that section.

In exercising their powers under s. 16, the council must pay compensation for any damage done. (S. 308, P. H. Act, 1875.)

The council must not empty sewage or filthy water into any stream, canal, lake or pond, unless such polluting matter has been rendered innocuous. (S. 17, P. H. Act, 1875.) Road-surface water, though discolouring a stream, is not a pollution. (*Durrant v. Branksome U. D. C.*, *supra*.)

For the purpose of laying sewers the district council can break open a main road, but they must restore the road to the satisfaction of the County Council. (S. 11, sub-s. 12, Local Government Act, 1888.)

In connection with the power of carrying sewers into private lands (or in fact the execution of any other works), s. 327, P. H. Act, 1875, provides that a district council cannot disturb or interfere with lands or other property vested in the Admiralty or War Office, or interfere with any navigation or water rights or with a towing-path so as to interrupt the traffic (*N.B.*—The fact that the interruption of traffic on the towing-path will be slight or only temporary makes no difference (*Conservators of River Thames v. Walton-on-Thames U. D. C.*, "The Times," February 11th, 1907)), or execute any works through or under wharves, quays, docks, harbours or basins vested in any body by Act of Parliament, without the consent of that body.

The council can alter or discontinue a sewer, provided that they supply the persons using it with another, and that the alteration or discontinuance of the sewer does not create a nuisance. (S. 18, P. H. Act, 1875.)

For the purpose of disposing of sewage, the district council can (a) construct the necessary works within their district or

(subject to s. 32, *infra*) outside their district; (b) contract for the use or purchase of, or can take on lease, lands, buildings, machinery and materials, either within or without the district; (c) contract to supply any person with the sewage (for him to deal with it) for any period not exceeding twenty-five years, and the council can contract for the execution of the works necessary for such supply. (See *infra*, s. 30.)

In the exercise of any of these powers no nuisance must be created. (S. 27, P. H. Act, 1875.)

A district council may be restrained by injunction from creating a nuisance; but a nuisance arising from a local authority's sewage-works cannot be dealt with under s. 91 (see NUISANCES, p. 264), P. H. Act, 1875. (*R. v. Parlbby* (1889), 22 Q. B. D. 520; 58 L. J. M. C. 49.)

A district council can by agreement, and with the sanction of the L. G. B., connect their sewers with the sewers of the local authority of an adjoining district, on such terms as may be agreed upon between them, or, in case of disagreement, as may be settled by the L. G. B. But the first-mentioned council must not allow (as far as practicable) storm-water from their district, and must not permit sewage from other districts, to flow into the sewers of the last-mentioned authority, unless that local authority give their consent. (S. 28.)

Land appropriated for sewage purposes may be let by the council as a sewage-farm for any period not exceeding twenty-one years, or the council can farm it. But in dealing with land used as a sewage farm, provision must be made for the effectual disposal of all sewage brought on to it without creating a nuisance. (S. 29.)

When the council have made an agreement with a person for the supply of sewage (see s. 27, *supra*), and have contracted for the works necessary for that supply, they can contribute to that person's expenses in carrying out all or any of the purposes of the agreement, and they can become a shareholder in a company with which such agreement has been made, or to which it may have been transferred. (S. 30.)

Before beginning the construction or extension of sewers or other works for sewage purposes outside their district, the council must give at least three months' notice of their intention

by advertizing it in the local newspapers of the district in which the work is to be carried out. The notice must describe the nature of the work, must name the parishes, streets and other lands (if any) in which the work will be executed, and must also name a place where a plan of the proposed work can be inspected.

A copy of this notice must be served on all owners, lessees and occupiers of lands, on the overseers of the parishes, and on the highway authorities affected by the intended works. (S. 32.)

The concreting of the bottom of a pool into which sewage-farm effluent flowed, in order to prevent an accumulation of sewage fungus, was held to be a "work for sewage purposes." (*Wimbledon L. B. v. Croydon Sanitary Authority* (1886), 32 Ch. D. 421; 56 L. J. Ch. 159.)

If any body on whom this notice is served objects to the proposed works and serves notice of objection on the council within the three months' period, the works must not be begun without the sanction of the L. G. B., after an inquiry. (S. 33.) The council can apply to the L. G. B. to hold the inquiry. (S. 34, P. H. Act, 1875.)

The P. H. (Support of Sewers) Amendment Act, 1883, makes provision for the support of a local authority's sewers and other sanitary works constructed in mining districts.

"Sanitary works" includes any works of sewerage, drainage, sewage disposal, lighting, water supply, and all fixtures, pipes and other apparatus used in connection with such works and belonging to the local authority. (S. 2.)

"Support" includes vertical and lateral support. (S. 2.)

A district council can purchase land over a mine or the right to make sanitary works over it. They must serve notice to treat, as under the Waterworks Clauses Act, 1847, on the mine-owner; and in this notice they can specify the nature and extent of the support they require for their works.

The amount of compensation payable to the mine-owner may be agreed upon or settled by arbitration in accordance with the provisions of the P. H. Act, 1875, relating to arbitration.

This sum, together with all expenses incurred by the council in settling it, are to be defrayed as expenses incurred under the

P. H. Act, 1875; and the council have the powers of borrowing money under that Act.

The provisions of the Waterworks Clauses Act, 1847, relating to the support of waterworks by mines are applied by this Support of Sewers Act, 1883, to the support of sewers, &c. The council's powers in the matter may be briefly summarized as follows :—

The council, when they purchase land over a mine for sanitary works, are not entitled to the minerals (unless expressly purchased), except such minerals as are dug out during the construction of the work.

When laying down pipes or doing any underground work over a mine, the council must make a map showing the position of the works. The map must be on a scale not less than 1 inch to the mile, and must be open to inspection at the council's offices. Copies of it must be deposited with the Clerk of the Peace.

Unless otherwise arranged by agreement, a mine-owner must not work that part of the mine which is subjacent to a sanitary work or within forty yards of it without giving thirty days' notice to the council. The council are not 'in their notice to treat limited to a forty yards "danger zone"; they may extend or lessen the distance as they think expedient. On receiving this notice the council can have the mine inspected, and if they think that danger may result to their works from the mine being worked there, they can compensate the mine-owner for not working it. The amount of compensation, in case of disagreement, is to be settled by arbitration.

If on receipt of this notice the council do not within the thirty days express to the mine-owner their willingness to make compensation, he can work that part of the mine, but he will be liable for damage wilfully caused to the council's works or by reason of the mine being worked in an unusual manner.

Though the mine-owner may be prevented from working the mine within the danger zone, he may cut air-ways, gate-ways, and water-levels within the prescribed area for the purpose of ventilating or working the mine outside that area; but in so doing he must not injure the council's sanitary works.

The council must from time to time compensate the mine-

owner for any restrictions they impose upon him in working his mine: the amount to be paid being settled by arbitration in case of disagreement.

The council will be liable for damage done to the mine by their sanitary works.

On giving twenty-four hours' notice the council can enter and inspect a mine, and must be provided by the mine-owner with the necessary facilities for so doing, in order to see whether it is being worked in a manner likely to injure their sanitary works.

CONNECTION WITH AND DRAINING INTO SEWERS.

Every owner or occupier of premises *within* the district has the right to connect the drains of those premises with the council's sewers on giving the notice required by the council, and subject to the council's regulations and supervision in respect to the method of connection. If a connection is made without the notice having been given there is a penalty of 20*l.*, and the council can close the communication between the drain and the sewer. (S. 21, P. H. Act, 1875.)

N.B.—A district council cannot authorize a third party to connect the drains of his premises with a sewer in private property (in this case a private road) though that sewer is vested in the council, and they could enter on the private property for repairing it. (*Wood v. Ealing Tenants, Ltd.*, (1907) 2 K. B. 390; 76 L. J. K. B. 764.)

The owner or occupier of premises *outside* the district has a similar right subject to the payment and conditions agreed upon between him and the council, or, in case of dispute, as may be settled, at the option of the owner or occupier, by a Court of summary jurisdiction or by arbitration. (S. 22, P. H. Act, 1875.)

In districts where Part III., P. H. Act, 1890, is in force the council, on being requested to do so and on payment of the cost in advance, must make the connection. The cost is to be estimated by the surveyor. But if the person making the request is dissatisfied with the estimate, he can, if it is under 50*l.*, apply to a Court of summary jurisdiction to fix the amount; if it is

over 50%, he can have the amount settled by arbitration. (S. 18, P. H. Act, 1890.)

In districts where s. 38 of Part III., P. H. Act, 1907, is in force, the council can require a drain which was in existence before the section came into force in the district and does not communicate with a sewer of the council to be laid open for the inspection of the surveyor before connection is made with the sewer. The drain will not be allowed to communicate with the sewer until the surveyor has certified that such communication may properly be made. (S. 38, P. H. Act, 1907.)

It is an offence for a person to allow to pass into a sewer of the district council, or into a drain communicating with it, any substance by which the free flow of sewage, or storm- or surface-water may be interfered with, or by which the sewer or drain may be injured. The offender is liable to a penalty of 10% and a daily penalty of 20s. (S. 16, P. H. Act, 1890.)

It is also an offence to turn into the council's sewer or into a drain connecting with it—(a) chemical refuse; or (b) waste steam or heated liquids of a higher temperature than 110° Fahrenheit, which, either alone or in combination with the sewage, causes a nuisance or is injurious to health. The offender is liable to a penalty of 10% and to a daily penalty of 5%. But no person is to be liable until the council have given him notice of this section or for an offence committed by him against it within seven days after receiving the notice. But this notice need not be given to the same person more than once.

The council's officers, who have been authorized in writing for that purpose, either generally or specially, can enter any premises to see whether the provisions of this section are being contravened. If an entry is refused, a justice on sworn complaint being made by the officer, after reasonable notice in writing of the intended complaint has been given to the person in charge of the premises, can make an order requiring that person to admit the officer. If any offence against the section is found to be committed, the order will remain in force until the offence has ceased or the work necessary to prevent its recurrence executed. (S. 17, P. H. Act, 1890.)

N.B.—The above ss. 16 and 17 only apply in districts where Part III. of the P. H. Act, 1890, has been adopted.

In *Graham v. Wroughton*, (1901) 2 Ch. 451; 70 L. J. Ch. 673, the question was discussed whether a person who had a right to turn slops into a sewer could also send faecal and solid matter into it. The Court expressed an opinion that no such right could be claimed.

When a person has the right to turn faecal matter into a sewer, it is for the council to see that the sewer is so arranged that no pollution of a stream is caused thereby. (*Ainley v. Kirkheaton L. B.* (1891), 60 L. J. Ch. 734.)

The district council must give facilities for enabling manufacturers in the district to drain the liquids proceeding from the factories or manufacturing processes into the council's sewers. There are, however, two provisos:—

- (i) the council are not to be compelled to admit into their sewers any liquid which would prejudicially affect their sewers or the disposal of sewage, or which from its temperature or otherwise would be injurious from a sanitary point of view; and
- (ii) The council are not to be required to give such facilities where their sewers are only sufficient for the requirements of their district. (S. 7, Rivers Pollution Act, 1876.)

This duty on the part of the council can be enforced by an order of the County Court judge of the district. (S. 10, Rivers Pollution Act, 1876.)

Apparently, where a factory has been given facilities for turning its trade effluents into the council's sewers, the council can withdraw those facilities if they find that their sewers are prejudicially affected by the liquids, or that the sewers are not sufficient for the purpose. (See judgment of Stirling, L. J., in *Eastwood v. Honley U. D. C.*, (1901) 1 Ch. 645; 70 L. J. Ch. 313.)

The object of the second proviso is to protect small districts from the burden of having to alter a sewerage system which is sufficient for the district in order to provide for the refuse of a factory which may be established in its midst. (*Pasmore v. Oswaldtwistle U. D. C.*, (1898) A. C. 397; 67 L. J. Q. B. 635.)

An urban council may provide a map of the system of sewerage in the district. This map must be kept in the council

office, and be open to the inspection of the ratepayers. (S. 20, P. H. Act, 1875.)

SANITARY ARRANGEMENTS OF HOUSES.

If a house in the district is without a drain, or the drains are not sufficient for the effectual drainage of the house, the council can require, by notice in writing, the owner or occupier to make a covered drain to empty into the council's sewer, if there is a sewer not more than 100 feet from the house. If there is no sewer within this distance, the council can require that the drain shall empty into a cesspool or other receptacle (not under a house) as they may direct.

The council can also direct what the level, fall and size of a drain shall be, and of what material it is to be composed. If their requirements are not complied with, they can do the work themselves and recover the expenses from the "owner" of the house, or may declare the expenses to be private improvement expenses.

But if when dealing with two or more houses under this section the council think it would be less expensive to make a new sewer and cause the houses to drain into it than to require them to drain into an existing sewer, the council can construct the new sewer and cause the houses to drain into it. The expense of making the new sewer can be apportioned among the owners of the houses, or the council can declare them to be private improvement expenses. (S. 23, P. H. Act, 1875.)

N.B.—Though the notices under this section may be served by the council on the owner or occupier of the house, unless the expenses are not declared private improvement expenses, the owner is the person liable to the council for their expenses.

"Owner" is defined by s. 4, P. H. Act, 1875, as the person for the time being receiving the rack-rent of the premises (*i.e.*, a rent which is not less than two-thirds of the net annual value of the property), whether on his own account or as agent or trustee for any other person, or who would receive this rent if the premises were let.

If the council consider that a house drain connected with a sewer, though sufficient for the effectual drainage of the house, is not adapted to the general sewerage system of the district,

they can close up the old drain on substituting for it a new drain or drains equally effectual and communicating with a sewer. The work must be done at the expense of the local authority. (S. 24, P. H. Act, 1875.)

The council can agree with an owner of premises who is required (*e.g.*, as *supra*), or who desires to make, alter, or enlarge a sewer or drain, to do the work themselves (s. 18, sub-s. 3, P. H. Act, 1890), at the expense, to be agreed upon, of the owner.

N.B.—This section only applies in districts where Part III., P. H. Act, 1890, has been adopted.

In an urban district (a rural council can be invested by L. G. B. with powers under the section), no new house must be erected, and no house which has been pulled down must be rebuilt, without drains being constructed for it. The council, acting on the report of their surveyor, can decide what shall be the level, fall, size and material of the drains. These drains must empty into a sewer of the council if there is one within 100 feet from the site of the house; and, if there is no sewer within this distance, into such cesspool or place, not under a house, as the council direct.

A person erecting a house without providing it with drains is liable to a penalty of 50*l.* (S. 25, P. H. Act, 1875.)

The council can require a person erecting houses to connect each house with the sewer by means of a separate drain—otherwise the council might have foisted upon them a construction, such as a combined drain, which might be a “sewer” repairable by them. (*Woodford U. D. C. v. Stark* (1902), 18 T. L. R. 439.) But the council cannot require a builder to lay two separate drains from a house—one for sewage and the other for surface water—to connect with two separate sewers when one sewer is sufficient to carry off the drainage of the house. (*Matthews v. Strachan*, (1901) 2 K. B. 540; 70 L. J. K. B. 806.)

Rain-water pipes used for carrying off water from a roof must not be used for carrying off the soil or drainage from a privy or water-closet. A person offending against this section is liable to a penalty of 5*l.* and a 40*s.* daily penalty. (S. 36, P. H. Act, 1907.)

No water-pipe, stack-pipe, or down-spout used for conveying surface water from any premises must be used as a ventilating shaft to a drain. A person who, after receiving fourteen days’

notice from the council of the provisions of this enactment, offends against the section is liable to a penalty of 40s. and a daily 20s. penalty. (S. 37, P. H. Act, 1907.)

If on the report of the surveyor, medical officer, or inspector of nuisances it appears to the council that any building is not provided with a proper sink or drain, or other necessary appliance for carrying off refuse water from the building, the council can by notice in writing require the owner or occupier to provide what is necessary. The notice must specify the manner and time (not less than twenty-eight days) in which the sink, &c. must be provided. Should the person served with the notice make default he is liable to a 5*l.* penalty and a 40s. daily penalty, and the council can provide the required sink, &c. and recover the expense of so doing from the defaulter summarily as a civil debt. (S. 49, P. H. Act, 1907.)

N.B.—Ss. 36, 37 and 49, *supra*, are only in force in districts to which they or the whole of Part III., P. H. Act, 1907, have been applied by order of the L. G. B.

S. 41, P. H. Act, 1875, empowers a district council, on receiving a written complaint from any person that a drain, privy, cesspool, &c. of any premises in the district is a nuisance or injurious to health, to examine the subject of the complaint. This section has been extended by s. 34, P. H. Act, 1907, so as to enable the council, in districts where s. 34 of Part III. of the 1907 Act is in force, to exercise the powers given by s. 41 of the 1875 Act when, *on the report in writing of their surveyor or inspector of nuisances* the council *have reason to suspect* that a drain, water-closet, earth-closet, privy, ashpit, or cesspool is a nuisance or injurious to health.

The procedure to be followed by the council on receiving the complaint or the report above-mentioned is as follows: The council can give authority in writing to their surveyor or sanitary inspector to enter the premises, open the ground, and to examine the drain, &c. Twenty-four hours' notice in writing must, however, first be given to the occupier of the premises, except in a case of emergency, when this notice may be dispensed with. If on examination the drain, &c. is found to be in proper condition, then any damage caused by the examination must be made good by and at the expense of the council.

But should the drain, &c. require alteration or amendment, the council must forthwith give written notice to the *owner or occupier* to do the work needful, either immediately or within the time specified in the notice.

If the notice is not complied with, the defaulter is liable to a 10s. penalty for each day he continues to make default, and the council can execute the work and recover the expenses from the *owner* of the premises or else declare them to be private improvement expenses. (S. 41, P. H. Act, 1875.)

N.B.—There is an appeal against the district council's requirements to the L. G. B. (S. 268, P. H. Act, 1875.)

A joint notice may be served on the owners of several houses requiring them to do jointly the works specified in the notice. (*Lancaster v. Barnes U. D. C.*, (1898) 1 Q. B. 855; 67 L. J. Q. B. 744.) Where a person served with this notice disputes his liability, but does the work required under protest, he can recover the cost from the council if it is subsequently found that the council were liable to do the work—*e.g.*, that the drain was a sewer. (*Haedicke v. Friern Barnet U. D. C.*, (1904) 2 K. B. 807.)

The twenty-four hours' notice which the section requires should be given by the council to the *occupier* of the premises before the sanitary inspector can enter on those premises need not be given by the council to the *owner* before they can recover from the *owner* the expenses incurred by the council in making good the drain, &c. which the *occupier* has not put into repair. (*Bromley Corporation v. Cheshire*, "The Law Times," Jan. 4th, 1908.)

If the medical officer, surveyor or inspector of nuisances reports to the council that he has reasonable grounds for believing that any drains of a building are so defective as to be injurious or dangerous to health, the council can authorize him to apply the smoke test or coloured water test or other similar test, but not a test by water under pressure. But this power can only be exercised if the owner or occupier of the building consents to, or an order of a Court of summary jurisdiction having jurisdiction in the place where the building is situate authorizes, the application of the test.

If, on the application of the test, the drains are found to be

defective, the council may, by notice specifying generally the defect, require the owner to remedy it within a reasonable time to be named in the notice. If he makes default, the council can do the work and recover the expenses from the owner summarily as a civil debt, or declare them to be private improvement expenses.

The owner or occupier of the building must give all reasonable facilities for the application of the test which has been consented to by him or authorized by justices. Should he fail to do so, he is liable, for each offence, to a penalty of 40s., and a daily penalty of 20s. (S. 45, P. H. Act, 1907.)

A person can appeal to Quarter Sessions from the order of justices ordering the application of the test. (S. 7, P. H. Act, 1907.)

N.B.—S. 45 is only in force when it or Part III., P. H. Act, 1907, has been applied to the district by L. G. B. order.

If, by the report of the medical officer, surveyor, or inspector of nuisances, it appears to the council that any cesspool or other receptacle, used or formerly used as a receptacle for obnoxious matter or for the drainage of a house, or that any ashpit, well, or disused well, belonging to a house is prejudicial to health or otherwise objectionable for sanitary reasons, the council may, by notice in writing, require the owner or occupier of the house to fill up or remove the cesspool, &c. or to have it so altered as to remove any sanitary objection to it, and to have any drain connecting with it to be effectually disconnected or destroyed. If such cesspool, &c. is used in common by the occupiers of two or more houses, or parts of houses, it will be sufficient to serve the notice for the filling up or removal on any one or more of the owners or occupiers.

If default is made, the council may carry out the requisitions of their notice, and can recover the expenses from the defaulters summarily as a civil debt, or, where the owners are the persons liable, as private improvement expenses. (S. 46, P. H. Act, 1907.)

A person can appeal to the L. G. B. against the council's requisitions under this section. (S. 7, sub-s. 2, P. H. Act, 1907.)

N.B.—S. 46 is only in force in districts to which it or Part III. of the 1907 Act has been applied by L. G. B. order.

It is an offence, entailing a 20l. penalty, to erect or to rebuild a house without a sufficient water-closet, earth-closet, or privy, or ashpit, furnished with proper doors and coverings. (S. 35, P. H. Act, 1875.) This section does not mean that each individual house must have a separate closet; two houses may have a closet in common if it is sufficient. (*Clutton v. Pointing* (1879), 4 Q. B. D. 340; 48 L. J. M. C. 135.)

If a house appears to the council, on the report of the surveyor or inspector of nuisances, to be without a sufficient closet or privy, the council can give written notice to the owner or occupier requiring him to provide a sufficient one. Two or more houses may have one closet or privy in common if the council are satisfied that it will be sufficient.

If the notice is not complied with, the council can do the necessary work, and recover the expenses from the owner, or declare them to be private improvement expenses. (S. 36, P. H. Act, 1875.)

N.B.—The council cannot make use of this section to enforce the carrying into effect of a general scheme for altering all earth-closets in the district into water-closets. (*Wood v. Widnes Corporation*, (1898) 1 Q. B. 463; 67 L. J. Q. B. 254.) They can, however, require the owner or occupier of a house to provide a different form of accommodation to the one in existence, *e.g.*, a water-closet for an earth-closet, should the surveyor or sanitary inspector have reported it not to be sufficient (*Nicholl v. Epping U. D. C.*, (1899) 1 Ch. 844; 68 L. J. Ch. 393); but the council cannot insist on the adoption of any particular pattern of sanitary appliance. (*Wood v. Widnes Corporation.*)

Any enactment (*e.g.*, a bye-law) in force in the district requiring the construction of a water-closet may be deemed to be satisfied, if the council approve, by the construction of an earth-closet. When the council have approved of an earth-closet, instead of a water-closet, being provided for a house, they can agree with the water contractors for dispensing with a supply of water to that house for water-closet purposes.

The council can undertake to supply, or can contract for the supply of, dry earth or other deodorizing substance for earth-closets in the district.

“Earth-closet” means, for the purposes of this section, any

place for the reception and deodorization of fæcal matter, which has been constructed to the council's satisfaction. (S. 37, P. H. Act, 1875.)

With respect to any sanitary convenience used in common by the occupiers of two or more separate dwelling-houses, the following provisions will have effect in districts where s. 21 of Part III., P. H. Act, 1890, has been adopted:—

- (i) A person improperly fouling or injuring such place is liable to a 10s. penalty.
- (ii) If such place, or the approaches to it, or its walls, floors, seats, or fittings, are, in the opinion of the council or their officer, a nuisance for want of proper cleansing, the persons having the use of it are liable to a penalty of 10s. and a 5s. daily penalty. Alternatively, such a place might be dealt with as a nuisance under s. 91, P. H. Act, 1875 (p. 264).

The council must provide that all drains, water-closets, privies, ashpits, and cesspools in the district are constructed and kept so as not to be a nuisance or injurious to health (s. 40, P. H. Act, 1875); and see as to the council's powers, to make bye-laws with regard to these matters, pp. 34, 306.

In districts where s. 39, Part III., P. H. Act, 1907, is in force the council are given still further powers with regard to the provision of closet accommodation:—

- (a) On the deposit of building plans, the council can require that the intended building shall be provided with such number of water—or slop—closets as the council may consider necessary.
- (b) If on the report of the medical officer, or the surveyor, or the inspector of nuisances, the council are satisfied that a building has not been provided with sufficient closet accommodation, and the case is not one in which sufficient accommodation can be provided by the alteration of any existing closet accommodation (see sub-s. 4 *sequitur*), and where there are a sufficient water supply and sewer, the council can, by notice in writing, require the owner or owners to provide such number of water- and slop-closets, or such one or

more of either class of closet as the circumstances of the case may render necessary.

If default is made, the council may, after the expiration of the time (which must not be less than fourteen days) prescribed in the notice, do the work and recover the cost summarily as a civil debt from the defaulter. (S. 39, sub-s. 3.)

- (c) The council, where there are a sufficient water supply and sewer, may, by written notice to the owner or owners of a building, require any existing closet accommodation to be altered, so as to be converted into a water closet or slop-closet.

If default is made, the council may, at the expiration of the time (which must not be less than fourteen days) specified in the notice, do the work themselves.

With regard to the payment of the expenses in case of default being made by the owners, where the work of alteration is done by the council in respect of a pail-closet, the expenses must be borne by the council; where the work of alteration is done by the council in respect of any other existing closet accommodation, half the expense must be borne by the council and the other half by the owners, and is recoverable summarily as a civil debt.

Every notice given by the council under sub-s. 4 requiring the alteration of any existing closet accommodation must state the effect of the sub-section. (S. 39, sub-s. 4.)

- (d) A district council cannot exercise any of the powers given by this s. 39 with regard to slop-closets unless and until the L. G. B. has been satisfied by the council, and has by Order declared, that the circumstances of the district are such as to render it necessary or expedient that the section should have effect with respect to slop-closets. (S. 39, sub-s. 5.)

N.B.—Sub-s. 1 of s. 39 contains definitions of the expressions used in the section :—

“Closet accommodation” includes a receptacle for human excreta, together with the structure comprising such receptacle and the fittings and apparatus connected with it.

“Pail-closet” means closet accommodation including a moveable receptacle for human excreta.

"Water-closet" and "slop-closet" mean closet accommodation used or adapted to be used in connection with the water carriage system, and having proper communication with a sewer, and having provision for the flushing of the receptacle, in the case of a water-closet by means of a fresh water supply, and, in the case of a slop-closet, by means of slops or waste liquids of the household or rain water.

"A sufficient water supply and sewer" means a water supply and a sewer which are sufficient and reasonably available for use in, or in connection with, the efficient flushing and the efficient removal of excreta from such number of water-closets or slop-closets as the council require to be provided in any particular case. (S. 39, sub-s. 1.)

When the council do any work under this s. 39 for the common benefit of two or more buildings in different ownerships, the expenses which are recoverable by the council shall be paid by the owners in such proportions as the surveyor, or, in case of dispute, a petty sessional Court, may determine. (S. 40, sub-s. 1.)

Expenses not recoverable by the council (see *supra*, s. 39, sub-s. 4) are to be paid by the council as expenses incurred in the execution of the P.H. Act, 1875. (S. 40, sub-s. 2.)

The council may declare the expenses recoverable from the owners to be private improvement expenses. (S. 40, sub-s. 3.)

Any person duly authorized in writing by the council must, on production of his authority, be admitted on to premises for the purposes of s. 39. If admission is refused, he can make complaint on oath before a justice, who can thereupon make an order for his admission. A refusal to obey this order to admit entails a penalty of 5*l*. (S. 41.)

A person who deems himself aggrieved by any requirement of the council under s. 39, *supra*, or who objects to the reasonableness of any expenses recoverable from him, may appeal, within fourteen days after service of the notice or after demand for payment, to a Court of summary jurisdiction. The order of the Court is conclusive.

But a person, after demand for payment of the expenses has been made, can only appeal as to the reasonableness of the expenses, and cannot then raise any other question. Pending

the decision of the Court upon the appeal the council must not execute any works to which their notice relates, and any proceedings which may have been commenced for the recovery of the expenses must be stayed. (S. 43.)

N.B.—The above ss. 39 to 43 of Part III., P. H. Act, 1907, are in force only in such districts to which they or the whole of Part III. have been applied by L. G. B. Order.

A district council may undertake or contract for the cleansing of earth-closets, privies, ashpits, and cesspools. (S. 42, P. H. Act, 1875.) The word "and" is used distributively in the section: the council can undertake the duty of cleansing all or any of these different kinds of receptacle in the district. (*Stainland Industrial Co. v. Stainland U. D. C.*, (1906) 1 K. B. 233; 75 L. J. K. B. 190.)

If the council undertake this duty, either by themselves or by a contractor, and, after seven days from receiving notice from the occupier of any premises that the privy or other receptacle needs cleansing, they make default, the council are liable to a daily penalty of 5s. (S. 43, P. H. Act, 1875.)

If any inn, public-house, beer-house, eating-house, refreshment-house, or place of public entertainment has no urinal attached to it, the council may, by notice in writing, require the owner of the premises to provide and maintain on them one or more proper and sufficient urinals in a suitable position.

If the owner fails to comply with the notice within a reasonable time, he is liable to a penalty of 20s. and a 10s. daily penalty. (S. 44, P. H. Act, 1907.)

N.B.—This section is only in force in districts to which it or Part III., P. H. Act, 1907, has been applied by L. G. B. Order.

An owner of the above-mentioned premises can appeal to Quarter Sessions against the council's requirements. (S. 7, P. H. Act, 1907.)

(See further, with regard to a district council's powers in respect of public urinals, p. 160.)

• Sky-signs.

In districts where Part IX., P. H. Act, 1907, is in force, a sky-sign must not be erected or fixed to or upon any building,

nor must any existing sky-sign be retained for a longer period than three years after the date when this Part IX. comes into force in the district, and then not without the license of the council, which may be granted subject to such conditions as the council think fit.

The license will become void :—

(i) If any addition to the sky-sign is made except for the purpose of making it secure under the direction of the surveyor ; (ii) if any change is made in the sky-sign ; (iii) if the sky-sign or any part of it falls either through accident, decay or other cause ; (iv) if any addition or alteration is made to or in the building on, over, or to which the sky-sign is placed or attached, if such alteration or addition involves the disturbance of the sky-sign or any part of it ; (v) if the building over, on, or to which the sky-sign is placed or attached becomes unoccupied or is destroyed.

If a sky-sign is erected or retained contrary to the above provisions, the council can give the owner of the sky-sign fourteen days' notice to remove it, and if he fails to do so, they can have it removed, and can recover the expenses incurred by them from the defaulter. A person contravening any of these provisions or the conditions of a license, is also liable to a penalty of 5*l.* and a daily penalty of 20*s.*

“ Sky-sign ” means any word, letter, model, sign, device or representation in the nature of an advertisement, announcement or direction supported on or attached to any post, pole, standard, framework, or other support wholly or in part upon, over, or above any house, building or structure, which sky-sign, or any part of it, *shall be visible against the sky from some point in a street or public way*, and includes all and every part of such post, pole, standard, framework, or other support.

“ Sky-sign ” also includes any balloon, parachute, or other similar device employed wholly or in part for the purposes of any advertisement or announcement on, over, or above any house, building, structure, or erection of any kind, or on or over any street or public way.

“ Sky-sign ” does not include—

(a) Any flagstaff, pole, vane or weathercock, unless adapted

or used wholly or in part for the purpose of any advertisement or announcement ;

- (b) Any sign or any board, frame, or other contrivance securely fixed to or on the top of the wall or parapet of a building, or on the cornice or blocking course of a wall, or to the ridge of a roof. But such board, frame, or other contrivance must be of one continuous face and not open work, and must not extend in height more than three feet above any part of the wall, parapet, or ridge to, against, or on which it is fixed or supported ;
- (c) Any word, letter, &c. &c. relating exclusively to the business of a railway or canal company, and placed wholly upon or over the railway, canal, station, wharf, quay, yard, platform, or approach to a station, wharf, or quay belonging to the company, and so placed that it cannot fall into a street or public place. (S. 91, P. H. Act, 1907.)

N.B.—The above provisions will only be in force in districts to which Part IX., P. H. Act, 1907, has been applied by order of a Secretary of State.

Slaughter-houses.

An urban district council may provide their district with slaughter-houses ; and if they do so, must make bye-laws for their regulation and charges for their use. (S. 169, P. H. Act, 1875.)

An urban district council have the following powers of regulating slaughter-houses in the district not provided by the council :—

All slaughter-houses must be registered by the council.

Bye-laws may be made for their regulation by the council.

No new slaughter-house or knacker's yard (*i.e.*, premises not used as such in 1875, or at the date of a special Act, *e.g.*, a local Improvement Act, incorporating the Towns Improvement Clauses Act, 1847) must be used without the license of the council.

N.B.—This license is a personal one, and does not attach to

the premises, so that a fresh license is required on the death of the licensee. (*Goodwin v. Sale*, (1907) 2 K. B. 278; 76 L. J. K. B. 654.)

The council's officers may enter a slaughter-house to inspect it, the cattle, the carcasses, and the meat there. Any meat appearing to be unfit for human food may be seized and taken before a justice, who can order its destruction. (S. 169, P. H. Act, 1875, incorporating ss. 126—131, Towns Improvement Clauses Act, 1847.)

The owner or occupier of a slaughter-house which has been licensed or registered must, within one month from obtaining the license or having his place registered, affix and keep on a conspicuous part of the premises a notice, "Licensed slaughter-house," or "Registered slaughter-house," as the case may be.

Failure to put up or to renew this notice after a written requisition to that effect from the council entails a 5*l.* penalty, and a penalty of 10*s.*, after conviction, for every day while the offence continues. (S. 170, P. H. Act, 1875.)

In districts where Part III., P. H. Act, 1890, has been adopted, further provisions relating to slaughter-houses will apply:—

A license for the use of a place as a slaughter-house is to remain in force for such time, not less than twelve months, as the council specify in the license. (S. 29, P. H. Act, 1890.)

N.B.—The council have no power to impose any condition limiting the duration of the license to less than twelve months. (*Taylor v. Winsford U. D. C.*, (1907) 2 K. B. 396; 76 L. J. K. B. 897.)

When there is a change of occupier of a licensed or registered slaughter-house, the person becoming the occupier or joint occupier must give written notice of the change to the sanitary inspector. If this notice is not sent within one month after the change, there is a 5*l.* penalty. But notice of this requirement must be endorsed on all licenses granted by the council after the adoption of Part III. of the Act in the district. (S. 30, P. H. Act, 1890.)

Justices can revoke a license if the licensee is convicted of selling, or having on his premises, meat unfit for human food. (S. 31, P. H. Act, 1890.)

N.B.—Ss. 29, 30, 31 are only applicable to urban authorities, unless a rural council are invested with urban powers by the L. G. B.

“Slaughter-house” includes any building or place used for slaughtering cattle, horses, or animals of any description for sale. (S. 4, P. H. Act, 1875.) Premises where cattle were “pined” or fasted previous to being slaughtered, were held to be a slaughter-house, although the beasts were killed at some other place. (*Hides v. Littlejohn* (1896), 74 L. T. 24.)

A knacker’s yard, which must be licensed annually, is a place kept for slaughtering horses and other cattle not killed for butcher’s meat. The licensing of knackers’ yards was transferred from Quarter Sessions to the district council by s. 27, sub-s. 2, Local Government Act, 1894.

Telephones and Postal Arrangements.

The Postmaster-General has the exclusive right of transmitting public telegrams and telephone messages; but he may authorize other persons, *e.g.*, a district council, by special license to establish a telephone system in the district. (S. 4, Telegraph Act, 1869.)

An urban district council, which have obtained a license from the Postmaster-General to provide a system of public telephonic communication, may defray the expenses incurred by them in the matter as though incurred in the execution of the P. H. Act, 1875, and may also borrow money as under that Act. (S. 2, Telegraph Act, 1899.)

An urban district council may make a money grant so that a new post office proposed to be established in the district by the Postmaster-General shall be on a more expensive site, or of a larger size, or more ornate a building than the Postmaster-General would otherwise provide. Or, with the consent of the L. G. B., the council may appropriate land belonging to them, or may purchase land for this purpose. The costs of the council can be charged on the rates or district fund, and money can be borrowed for the purposes of exercising their powers under this Act as under the P. H. Act, 1875. (S. 7, Post Office Act, 1891.)

A rural district council (Post Office Guarantee Act (No. 1),

1891) and an urban council (Post Office Guarantee Act (No. 2), 1898) may undertake to pay to the Postmaster-General any loss he may sustain by the establishment of a post office or by providing additional postal facilities which the council consider would be for the benefit of any contributory place or places. (S. 8, Post Office Act, 1891.) It makes no difference that the post or telegraph office, or that the postal facilities, should be established or provided outside the boundary of the district, if the district council consider that the contributory place proposed to be charged will be benefited. (Post Office Act (No. 1), 1898.)

A rural council's expenses in the matter will be "special" expenses, and must be apportioned among the contributory places, if more than one is to be benefited by these postal arrangements. (S. 8, Post Office Act, 1891.)

Tramways.

A tramway undertaking may be promoted either by means of a private Bill or by means of a Provisional Order of the Board of Trade, which Order must be confirmed by Parliament.

A Provisional Order authorizing the construction of a tramway may be obtained (a) by the district council, or (b) by any other person or company with the consent of the council of the district in which the tram-road is proposed to be laid. (S. 4, Tramways Act, 1870.)

But if the local authority of the district or districts in which two-thirds of the length of tramways is proposed to be laid do consent, the Board of Trade may ignore the refusal of a particular local authority to consent. (S. 5.)

N.B.—The same rule applies in the case of a promotion by means of a tramway Bill.

A tramway Bill may be opposed on compliance with the Standing Orders of Parliament with regard to private Bills.

See PROMOTION OF BILLS as to council's powers of opposing Bills.

Two or more local authorities may make a joint application for a Provisional Order, and the Board of Trade may empower them to jointly construct and own the tramway. (S. 17, Tramway Act, 1870.)

An application for a Provisional Order must not be made by a district council unless a resolution approving of the intention to make such application has been passed at a special meeting of the council, of which one month's notice must have been given, and at which two-thirds of the members must have been present and have voted. (S. 4, Tramways Act, 1870.)

The promoters' powers under a Provisional Order will cease, unless the Board of Trade permits an extension of time, in three events—(i) if they do not, within two years from the date of the Provisional Order, complete the tramway and open it for public traffic; (ii) if within one year, or such shorter time prescribed in the Order, the works are not substantially commenced; or (iii) if the works, having been begun, are, in the opinion of the Board of Trade, suspended without sufficient reason. (S. 18, Tramways Act, 1870.)

A local authority with powers under a Provisional Order which had purchased some lands (on which no buildings had been erected) and which had entered into two contracts (under which nothing had been done) were held not to have made a substantial commencement of works, and consequently their powers under the Order ceased. (*A.-G. v. Bournemouth Corporation*, (1902) 2 Ch. 714; 71 L. J. Ch. 730.)

When a district council have completed a tramway, instead of working it themselves, they may, with the approval of the Board of Trade, lease it for a period not exceeding twenty-one years. (S. 19, Tramways Act, 1870.)

A local authority's expenses in connection with the construction of a tramway are payable out of the rates, and they can borrow money subject to the sanction of the Board of Trade. (S. 20, Tramways Act, 1870.)

Before opening or breaking up a road for the purposes of tramway construction, the promoters must give seven days' notice to the council. The work must be done under the superintendence of the council, unless they decline to exercise a superintendence; and the promoters must pay the council the reasonable expense of such superintendence. Without the council's consent a greater length than 100 yards of a road which is not more than a quarter of a mile in length must not be broken up at a time; and in the case of a road exceeding

that length, not more than 100 yards at a stretch are to be opened, and an interval of at least a quarter of a mile must be left between two places where the road has been so broken open. (S. 26.) The work must be completed with all convenient speed within four weeks, unless the council otherwise consent in writing, and the road reinstated, and the promoters must bear the reasonable expenses of repairing the road for six months after it is restored, so far as those expenses have been increased by the breaking open of the road. There are penalties for failure to comply with this section. (S. 27, Tramways Act, 1870.)

When the tramway, or work connected with it, will interfere with a sewer, watercourse, subway, or with the sewerage or drainage of the district, the promoters must not begin the work until they have given fourteen days' notice, in writing, of their intention to the council, nor until the council have, within those fourteen days, signified their approval or have allowed that period to elapse without signifying their disapproval. (S. 31, Tramways Act, 1870.)

The promoters must give seven days' notice to a company (this includes a council supplying their district with water or gas) owning gas or water mains and pipes, together with a plan of the proposed work, before the tramway is laid down. The company, if they think that the proposed work will endanger any main, or interfere with the supply of gas or water, can give a counter-notice to the promoters, requiring them to lower or otherwise alter the position of the pipes. Any difference of opinion as to the necessity of lowering or altering pipes is to be settled by arbitration. (S. 30, Tramways Act, 1870.)

N.B.—There is no time limit, as in the case of a notice under s. 31, *supra*, for serving a counter-notice to a notice under this s. 30. (*Hastings Tramway Co. v. Hastings Gas Co.* (1907), 76 L. J. Ch. 60.)

The district council may break up a tramway along a road vested in them for any of the purposes connected with their powers and duties as the highway or sanitary authority of the district. Except in a case of emergency, eighteen hours' notice must be given to the tramway company. If necessary, the council can require the traffic to be stopped, and they will not be liable to the company for compensation for loss of traffic.

The work must be done to the reasonable satisfaction and under the superintendence of the tramway company; but the company must bear any additional expense imposed on the local authority by reason of the tramway having been laid where mains, pipes, wires, &c. were in the road before the tramway was constructed. (S. 32, Tramways Act, 1870.)

Any difference or dispute arising between the local authority and the tramway promoters in relation to tramway works under the above sections is, on the application of either party, to be settled by a referee appointed by the Board of Trade. (S. 33, Tramways Act, 1870.)

N.B.—This section does not apply to a dispute between the tramway company and the council as to the liability to repair the junction between the roadway and the tramway. (*Norwich Corporation v. Norwich Electric Tramways Co.*, (1906) 2 K. B. 119; 75 L. J. K. B. 636.)

A district council may, by special resolution, decide to purchase a tramway undertaking in their district. This power may be exercised within six months after the expiration of twenty-one years from the time when the promoters were empowered to construct the tramway; or within six months after the expiration of every subsequent seven years; or within three months after a Board of Trade Order terminating the promoters' powers on account of their insolvency or by reason of their discontinuance for three months to work the tramway. (S. 43, Tramways Act, 1870.)

The special Act or Provisional Order may, however, prescribe other periods in which this compulsory power of purchase may be exercised by the council.

The same requirements as in the case of a resolution to apply for a Provisional Order must be complied with in the case of a resolution to buy a tramway undertaking. Notice in writing must be served on the tramway company requiring them to sell, and thereupon they must sell on payment of the then value (exclusive of any allowance for past or future profits or compensation for compulsory sale or other consideration) of the tramway, buildings, works and plant suitable to and used by them for the purpose of the undertaking within the district. (S. 43, Tramways Act, 1870.)

N.B.—A dépôt for tramcars situated *outside* the district is a building used by the promoters for the purposes of their undertaking *within* the district. (*Manchester Tramway Co. v. Swinton and Pendlebury U. D. C.* (1904), 90 L. T. 795.)

In case of a difference between the parties, this value is to be determined by a referee appointed by the Board of Trade.

The purchase-money may be paid from the rates, and the council may borrow the money necessary, with the sanction of the Board of Trade.

When the sale has been made, all the rights and powers of the promoters are transferred to the council. (S. 43, Tramways Act, 1870.)

The council cannot take possession of the undertaking until the purchase-money has been actually paid. (*Manchester Tramways Co. v. Manchester Corporation and Stretford U. D. C.* (1902), 87 L. T. 678.)

The above section deals with a compulsory sale, but the promoters, after a tramway has been opened for traffic for six months, may, with the consent of the Board of Trade, sell the undertaking to the local authority.

The same special resolution must be passed by the council to purchase, and the council have similar powers as to providing the purchase-money as in the case of a compulsory purchase under s. 43, *supra*. (S. 44, Tramways Act, 1870.)

Subject to the provisions of the special Act authorizing a particular tramway, the district council can make bye-laws as to: (i) the rate of speed of tramcars; (ii) the distances at which trams are to follow one another; (iii) the stopping of cars; and (iv) the traffic on the roads where the tramway is laid. These bye-laws must be approved by the Board of Trade, and a copy of them must be sent to the promoters. The bye-laws must also be advertised for two successive weeks in the local newspapers within one month after having been made. A copy of the regulations which the promoters are authorized to make must be sent by them to the council. (S. 46, Tramways Act, 1870.)

A council have the same powers of licensing the drivers and conductors of trams as they have with respect to hackney carriage drivers. (S. 48, Tramways Act, 1870.)

Unemployed Workmen.

The Unemployed Workmen Act, 1905, which Act is in force for three years only (s. 8), provided for the establishment, by L. G. B. Order, of a distress committee for each municipal borough and urban district with a population of not less than 50,000. But the council of an urban district with a population of less than 50,000, and more than 10,000, may apply to the L. G. B. for the establishment of a distress committee, and, if the Board consents, this committee may be formed. The L. G. B., moreover, can, on or without any application being made by a County Council, district council, or board of guardians, form a central body and distress committees for any particular area. (S. 2.) Power was given to the L. G. B. to make regulations as to the powers and duties of a distress committee, and to provide in its Order for the constitution and proceedings of these committees. (S. 4.) In pursuance of these powers the L. G. B. has promulgated "The Urban Distress Committees (Unemployed Workmen) Order, 1905," and "The Regulations (Organization of Unemployed), 1905."

A district councillor, a member of a distress committee established under this Act, who was appointed registrar and inquiry agent, at a weekly salary, by the committee, was held to hold a paid office under the council, and therefore to be disqualified for membership of the district council under s. 46, Local Government Act, 1894. (*Crump v. Lewis*, "The Times," Feb. 12th, 1908.)

Unsound Food.

The medical officer or inspector of nuisances may at all reasonable times inspect any animal, carcase, meat, poultry, flesh, fish, fruit, vegetables, corn, bread, flour or milk "exposed for sale, or deposited in any place for the purpose of sale, or of preparation for sale and intended for the food of man." If any such article of food appears to the officer to be unfit for human food, he may seize it and have it removed in order that it may be dealt with by a justice. (S. 116, P. H. Act, 1875.) The justice, if satisfied that it is unfit for human food, can order it

to be destroyed. (S. 117, P. H. Act, 1875.) It is not necessary to give notice to the owner before applying to the justice to condemn the article seized. (*White v. Redfern* (1879), 5 Q. B. D. 15; 49 L. J. M. C. 19.) In districts where s. 28 of Part III., P. H. Act, 1890, has been adopted, s. 116, *supra*, applies to "all articles intended for the food of man sold or exposed for sale, &c."; and a justice may condemn and order the destruction of such an article as under s. 117, if satisfied on complaint being made to him that it is unfit for human food, although it has not been seized as mentioned in s. 116. (S. 28, P. H. Act, 1890.) The word "sold" in this section does not create a new offence. (*Firth v. McPhail*, (1905) 2 K. B. 300; 74 L. J. K. B. 458.) Compensation is payable if the food ordered to be destroyed is not in fact unsound. (See pp. 18, 19.)

The person to whom the condemned article "belongs or did belong at the time of exposure for sale, or in whose possession or on whose premises" it was found, is liable to a penalty of 20*l.* for each article, or to imprisonment for three months. (S. 117.) It is only the person who is exposing the article for sale, or has it in his possession or on his premises for the purpose of sale for human food at the time it is seized, who is liable to the penalty under this section. So where a customer, who had bought for his own consumption some unsound meat from a butcher, handed it over to the sanitary inspector, it was held that the butcher could not be convicted, as the conditions of the section had not been fulfilled. (*Vinter v. Hind* (1883), 10 Q. B. D. 63; 52 L. J. M. C. 93.) Nor can a consignor of unsound meat (*e.g.*, a farmer sending up a carcase to a meat salesman), although in a sense the meat is deposited by him for the purpose of sale on the consignee's premises, be convicted under this section if the meat is seized on the consignee's premises. The only penalty such a person is liable to is that his consignment may be ordered to be destroyed. (*Barlow v. Terrett*, (1891) 2 Q. B. 107; 60 L. J. M. C. 104; *Firth v. McPhail* (*ubi supra*).) Exposure for sale is not a necessary ingredient of the offence. A person may be convicted in whose possession unsound food is found deposited in any place for the purpose of preparation for sale (*Mallinson v. Carr*, (1891) 1 Q. B. 48; 60 L. J. M. C. 34), in which case a quantity of unsound

meat, admittedly intended by a butcher for human food, was seized when it was in his cart which was in an outhouse on somebody else's premises.

The burden of proof that the article of food seized was not exposed or deposited for sale and was not intended for human food is on the person charged with the offence. (S. 116.) It is not necessary for a conviction that the person should have actual knowledge that the article of food was unsound. (*Blaker v. Tillstone*, (1894) 1 Q. B. 345; 63 L. J. M. C. 72.) But where a butcher had on Saturday night put sound meat away in a safe, and on Monday morning, before the safe had been opened, the inspector entered the shop and asked to see the meat in the safe, some of which had become unsound, it was held on the evidence that whatever the butcher's intention may have been on the Saturday night, he did not intend on the Monday to expose this meat for sale until he had examined it. (*Wieland v. Butler-Hogan* (1904), 73 L. J. K. B. 513.)

There is a penalty of 5*l.* for preventing an officer from inspecting food (s. 118); and a justice, on sworn complaint by an officer of the council that he has reason to believe that there is on any premises unsound food intended for sale for human consumption, may grant a search warrant. There is a penalty of 20*l.* for obstructing an officer who has this warrant. (S. 119, P. H. Act, 1875.)

Water Supply.

COUNCIL'S OBLIGATIONS AS SANITARY AUTHORITY.

Public wells, pumps, conduits, &c. used for the gratuitous supply of water to the inhabitants of the district vest in and are under the control of the district council.

The council can provide for there being a plentiful supply of wholesome water from these sources of supply, or they may substitute other equally convenient sources of supply.

Subject to the restrictions imposed by ss. 52 and 53, P. H. Act, 1875, *infra*, the council can construct other similar works for supplying water gratuitously to the inhabitants for their own personal use, but not that they may sell it. (S. 64, P. H. Act, 1875.)

If it is represented to the district council that the water in a well, tank, or cistern, public or private, or that the water supplied from a public pump is polluted so as to be unfit for use for domestic purposes, the council can take steps for remedying it.

They must apply to a Court of summary jurisdiction, and the Court, after summoning before it the persons interested, can make a closing order or an order for preventing injury to the health of persons drinking the water.

The Court may order the water to be analysed at the council's expense.

If the person on whom the order is made fails to comply with it, the Court, on their application, can authorize the council to carry the order into effect.

The expense so incurred can be recovered summarily from the defaulter.

In a rural district these expenses, when not recovered or recoverable by the district council, are to be "special" expenses. (S. 70, P. H. Act, 1875.)

It is the duty of a rural district council to make a periodical inspection of the water supply of the district. (S. 7, P. H. Act, 1878.)

If the rural district council or their officers have reason to believe that a house has not a proper water supply, they can enter the premises and make an inspection.

Ss. 102 and 103, P. H. Act, 1875 (see NUISANCES, p. 271), apply to entries by the council's officials in pursuance of their powers under this section. (S. 7, P. H. Act, 1878.)

A house which is newly erected or rebuilt in a rural district must not be occupied unless the owner has obtained a certificate from the council (to be given on the report of the surveyor or medical officer) that there is a sufficient water supply available within a reasonable distance from the house. 'There is a 10% penalty on an owner who permits a house to be occupied without having obtained this certificate.

If the council refuse the certificate the owner can apply to a Court of summary jurisdiction for an order that the house may be occupied without the certificate, which order the Court may make after hearing both parties. (S. 6, P. H. Act, 1878.)

S. 62 of the P. H. Act, 1875, empowers any district council,

and s. 3 of the P. H. (Water) Act, 1878, a rural district council, to compel houses to be provided with a proper supply of water. The two sections, however, refer to different processes. S. 62 proceeds on the assumption that there is a water supply (whether provided by the council or not) within a reasonable distance of the house; and the council can make the owner pay the cost of connecting his house with this water supply. S. 3, on the other hand, applies to the bringing of water (*e.g.*, in mains) to within a reasonable distance of the house, and then the owner can be saddled with the cost of connecting his house with the water supply, and also of bringing the mains within a reasonable distance of his house. But there is a limitation as to the amount of the costs which can be recovered from the owner by the local authority laying down the mains. This limitation of cost does not apply to proceedings under s. 62. (*West Lancashire R. D. C. v. Ogilvy*, (1899) 1 Q. B. 377; 68 L. J. Q. B. 215.)

On the report of their surveyor that a house is without a proper water supply and such supply can be provided—

- (a) At a cost not above the water rate authorized by any local Act in force in the district; or
- (b) Where there is no such local Act, at a cost not exceeding twopence a week; or
- (c) At a cost determined by the L. G. B. on the council's application,

the council can by notice in writing to the *owner* of the house require him to furnish the house with a supply of water.

N.B.—The L. G. B. can, when a council apply under this s. 62, make a general scale of charges for supplying water in the district. (S. 8, P. H. Act, 1878.)

If the owner ignores the notice the council can execute the necessary works themselves, or can arrange with a water company to make the connections, &c.; and whichever of the two supply the water can levy a water rate on the house.

The expenses of carrying out the requirements of their notice can be recovered summarily from the owner, or the council can declare them to be private improvement expenses. If an owner is required under this section to take a supply of water from an unreasonable distance his only remedy is to appeal to

the L. G. B. under s. 268, P. H. Act, 1875. (*West Lancashire R. D. C. v. Ogilvy, supra.*)

S. 3 of the 1878 Act makes it the duty of a rural district council to see that every occupied dwelling-house has within a reasonable distance an available and sufficient supply of wholesome water for household purposes.

If the sanitary inspector or medical officer reports that a house is without such supply, and the council are of opinion that it can be furnished at a reasonable cost, and that this cost ought to be paid by the owner or defrayed as private improvement expenses, they can proceed as specified below.

N.B.—The section limits the reasonable cost to a capital sum the interest on which, at 5 per cent. *per annum*, would amount to twopence or threepence a week, as may be determined by the L. G. B. on the application of the council. This is rather a roundabout way of saying that the cost is limited to a sum of 13/.

The council must serve on the *owner* a notice in writing requiring him within a specified time, not exceeding six months, to provide his house with a proper water supply. This notice can be withdrawn or modified if the council are satisfied by the owner that their requirements are unnecessary.

If the first notice is ignored, a second notice must be served; and if within a month of its service this second notice has not been complied with, the council can do the work themselves, recovering the expenses from the owner, or they can declare the expenses to be private improvement expenses.

Forms of the notices are set out in the Schedule of the Act.

The council can enter premises in order to execute these works, and the provisions of ss. 102 and 103, P. H. Act, 1875 (see *NUISANCES*, p. 271), apply in such a case. (S. 3, P. H. Act, 1878.)

In the case of two or more houses whose owners have ignored the notices under this section the council may, if it appears desirable and not more expensive, provide a joint supply of water to the houses and apportion the expenses among the owners in such manner as the council think just.

Notice of apportionment must be served on the owners, and an owner can within twenty-one days object to the apportion-

ment and apply to a justice to determine whether it is a reasonable one or not. (S. 5, P. H. Act, 1878.)

If the owner who has been served with a notice under s. 3 objects—

- (1) that the supply of water is not required ; or
- (2) that the time limit specified in the notice is not sufficient ;
or
- (3) that it is impracticable to provide a water supply at a reasonable cost ; or
- (4) that the council ought to supply the water or render it wholesome ; or
- (5) that the whole or a part of the expense ought to be a charge on the district or contributory place in which his house is situated,

he can, within twenty-one days from receiving the second notice under s. 3, address a memorial of his objections to the council, and they must not in that case proceed to execute any works until authorized to do so by a Court of summary jurisdiction or by the L. G. B.

If his objections do not include (4) or (5), the Court, after hearing both parties, can, on the council's application, give the necessary leave to proceed with the work. If they do include (4) or (5) the council must send a copy of the memorial to the L. G. B. The Board, *inter alia*, has power to order the expense of providing this water supply to be apportioned between the owner and the council. If the L. G. B. cancels the council's notice on the ground that they ought to provide the supply, this memorial is to be treated as a complaint (p. 82) under s. 299, P. H. Act, 1875. (S. 4, P. H. Act, 1878.)

A district council can be compelled to provide a proper water supply by the L. G. B. or by the County Council on complaint being made to those bodies that the district council have failed to provide a supply of water when danger arises to the health of the inhabitants from the insufficiency or unwholesomeness of the existing supply of water, and a proper supply can be got at a reasonable cost. (See p. 82.)

Any person may complain to the L. G. B. on this score ; but a complaint of the neglect of a rural district council made to

the County Council must be by means of a resolution of the parish council.

N.B.—Though a parish council can utilize wells, springs or streams in the parish and provide facilities for obtaining water therefrom (s. 8, sub-s. 1 [e]), the exercise of these powers by the parish council will not relieve the district council of any obligation with respect to the water supply. (S. 8, sub-s. 3, Local Government Act, 1894.)

WATER SUPPLY BY DISTRICT COUNCIL.

A district council, urban or rural, can undertake to supply their district, or a part of it, with water. With this object the council can (a) construct and maintain waterworks; (b) take waterworks on lease, and, with the consent of the L. G. B., purchase waterworks or the right to take water in or outside the district, or the rights and powers of a water company; or (c) contract for a supply of water. (S. 51, P. H. Act, 1875.)

“Water company” includes any local authority who have acquired the power to supply water. (S. 4, P. H. Act, 1875.)

“Waterworks” includes streams, wells, pumps, reservoirs, tanks, cuts, mains, pipes, engines, and all machinery, lands and buildings used for supplying water. (S. 4, P. H. Act, 1875.)

A district council, on undertaking the water supply of the district, must not injuriously affect other persons’ rights over streams and water (s. 332), *e.g.*, the council, on becoming riparian owners of part of a stream, must not interfere with the flow of the water so as to prejudice another riparian owner. (*Roberts v. Gyrffai R. D. C.*, (1899) 2 Ch. 608; 68 L. J. Ch. 757.)

Before beginning to construct waterworks within the limits of supply of a water company, the council must give the company notice in writing stating for what purposes and to what extent they require water. If the company is able and willing to provide a proper and efficient supply for the council’s requirements, the council cannot construct waterworks within the company’s limits of supply. (S. 52, P. H. Act, 1875.)

Any dispute on this subject is to be settled by arbitration, as provided by the P. H. Act. (See p. 16.)

N.B.—This restriction only refers to a supply of water for

domestic purposes; works for getting water to flush sewers are not "waterworks" to which the requirements of s. 52 apply. (*West Surrey Water Co. v. Chertsey Union*, (1894) 3 Ch. 513; 63 L. J. Ch. 806.)

The laying down of mains in their district not previously supplied with water by the district council, which district formed part of the limits of supply of another local authority, was held to be a "construction" of waterworks prohibited by s. 52. (*Huddersfield Corporation v. Ravensthorpe U. D. C.*, (1897) 2 Ch. 121; 66 L. J. Ch. 581.) But the enlargement of existing waterworks is not a "construction" to which the section applies. (*Cleveland Water Co. v. Redcar L. B.*, (1895) 1 Ch. 168; 64 L. J. Ch. 64.)

When the council supply their district with water they have the same powers and are subject to the same restrictions for carrying water mains as in the case of sewers under ss. 16 and 32—34, P. H. Act, 1875. (S. 54, P. H. Act, 1875.) (And see pp. 80, 316.)

The council for the purpose of laying down water mains can enter on and open a private street without the owner's consent being necessary, but compensation (under s. 308, P. H. Act, 1875) must be paid by them to him for any damage done. (*Hill v. Wallasey L. B.*, (1894) 1 Ch. 133; 63 L. J. Ch. 1.)

Before beginning to construct a reservoir (other than a service reservoir or tank which will not hold more than 100,000 gallons), the council must give at least two months' notice of the intended work by advertisements in the local newspapers. If any person who will be affected by the proposed works gives, within that period, written notice to the council of his objection, the work must not be begun without the sanction of the L. G. B., after an inquiry into the matter. (S. 53, P. H. Act, 1875.)

Two justices, if satisfied on complaint being made to them (or without complaint) that a reservoir is dangerous, can order it to be repaired. The form of the order is contained in the Schedule to the Act. (Ss. 3—8, Waterworks Clauses Act, 1863.)

There is an appeal* to Quarter Sessions against the order. (S. 9, Act, 1863, incorporated with P. H. Act by s. 57, P. H. Act, 1875.)

the council for any injury caused to their pipes by such removal. (Ss. 48—52, Waterworks Clauses Act, 1847.)

When the communication has been made between a house and the council's main, and payment or tender has been made of a quarter's water rate, the owner or occupier is entitled to demand and receive a sufficient supply of water for domestic purposes. (Ss. 44 and 53, Waterworks Clauses Act, 1847.)

A supply of water for "domestic purposes" does not include a supply of water for cattle, or for horses, or for washing carriages when the horses and carriages are kept for sale or hire, or by a common carrier, or a supply for any trade, manufacture or business, or for watering gardens, or for fountains, or for any ornamental purposes. (S. 12, Waterworks Clauses Act, 1863.)

Water used for washing a private motor car belonging to a doctor and used by him in connection with his practice, is water used for a "domestic purpose" (*Harrogate Corporation v. Mackay*, (1907) 2 K. B. 611; 76 L. J. K. B. 977); and water supplied for the use of the boarders in a boarding-house is a supply for domestic purposes. The words "a supply of water for any trade, manufacture or business," mean some more direct use of the water in that business than the mere use of it by the inmates of the house. (*Per Channell, J.*, in *Pidgeon v. Great Yarmouth Waterworks Co.*, (1901) 2 K. B. 310; 71 L. J. K. B. 61.)

But water supplied to a swimming-bath at a boys' school was held not to be supplied for a "domestic purpose," though Stirling, L.J., doubted whether water for a swimming-bath used by the owner and his family would not be supplied for a "domestic purpose." (*Barnard Castle U. D. C. v. Wilson*, (1902) 2 Ch. 746.)

Water, of course, may be supplied for non-domestic purposes subject to an agreed charge, and there is no liability, unless there is an express stipulation to that effect, for failure by the council to supply water other than for domestic purposes, if the failure is due to frost, or unusual drought, or other unavoidable cause. (S. 13, Waterworks Clauses Act, 1863.)

There is a penalty on the consumer for using water for non-"domestic purposes" when the water is not supplied for such purposes, or for using water supplied for non-"domestic

purposes" in a manner contrary to the agreement under which it is so supplied.

In addition to the penalty, the council can recover the value of the water misused. (S. 18, Waterworks Clauses Act, 1863.)

N.B.—The above enactments of the Waterworks Clauses Acts are incorporated with the P. H. Act. (S. 57, P. H. Act, 1875.)

The water in the council's pipes may be constantly laid on at a pressure that will carry it to the top storey of the highest dwelling-house in the district. (S. 55, P. H. Act, 1875.)

And the water kept in the council's waterworks must be pure and wholesome. (S. 55, P. H. Act, 1875.)

It is an offence, entailing a penalty of 5*l.*, for a person to send a dog or other animal, or to put noisome things or filthy water into "waterworks" belonging to the council. (S. 64, Waterworks Clauses Act, 1847.)

There is a similar penalty if the consumer (a) wilfully or negligently suffers or causes a pipe, valve, cock, cistern, soil-pan, w.c., or other apparatus to be out of repair, or so used that water is wasted or contaminated; (b) makes any alteration to a service pipe or apparatus connected with it without the council's consent; and (c) there is a like penalty on a person who is not a consumer taking water from a reservoir, cistern, or pipe belonging to the council. (Ss. 17, 19, 20, Waterworks Clauses Act, 1863.)

Further, if a consumer does anything or fails to do anything which results in the waste, undue consumption, or contamination of the water, the council can cut off the water supply, and cease to supply him with water while the injury remains unremedied. (S. 16, Waterworks Clauses Act, 1863.)

N.B.—The above enactments of the Waterworks Clauses Acts are incorporated with the P. H. Act. (S. 57, P. H. Act, 1875.)

The council may (as to when they must, see *infra*) make a water rate for water supplied by them to any premises. Or they may supply water by measure—the council providing the meter—at an agreed upon rent. (Ss. 56 and 58, P. H. Act, 1875.)

If ten ratepayers in an urban district, or five ratepayers of a contributory place in a rural district, demand it, the council

must charge a rate or rent for the supply of water. (S. 10, P. H. Act, 1878.)

The water rate is assessed on the net annual value of the premises in the same manner as the general district rate. (S. 56, P. H. Act, 1875.)

When several houses or parts of houses in separate occupation by several persons are supplied with water by one common pipe, the several owners or occupiers are each to pay as if the supply was by a separate pipe. (S. 69, Waterworks Clauses Act, 1847.)

Water rates are payable in advance quarterly at Christmas Day, Lady Day, Midsummer Day and Michaelmas Day; and the first payment is to be made at the time when the communication pipe is laid down, or when the agreement to take water is made. (S. 70, Waterworks Clauses Act, 1847.)

An occupier removing between two quarter days must pay the rate to the next quarter day following his quitting the premises. (S. 71, Waterworks Clauses Act, 1847.)

Owners of houses or parts of houses occupied as separate tenements, of which (house or tenement) the annual value does not exceed 10*l.*, are liable (and not the occupiers) for payment of the water rate. (S. 72, Waterworks Clauses Act, 1847.)

A water rate is a rate made under the P. H. Act, 1875 (p. 240), and can be recovered in the manner provided by that Act for the recovery of rates. (*Elliott v. Russell*, (1902) 2 K. B. 748.) Moreover, if the rate is not paid when it is due, the council can cut off the water supply of the premises, and recover the expenses so incurred in addition to the rate. (S. 7, Waterworks Clauses Act, 1847.)

When water is supplied by measure, the council must provide the meter, and can agree as to the rent that is to be paid by the consumer for the use of the meter.

The council must at their own expense keep the meter in proper order, and for this purpose the council's officers can enter premises at all reasonable hours to test, inspect, and remove and replace meters. The consumer is not liable for rent for the meter so long as the council suffer it to be out of order. (S. 58, P. H. Act, 1875.)

The council's officers can also enter premises to inspect a meter and to measure the quantity of water supplied and

consumed. This entry, except with the sanction of a justice, can only be made between 10 a.m. and 4 p.m.; and there is a penalty for obstructing the officer. (S. 15, Waterworks Clauses Act, 1863.)

The register of the meter is *prima facie* evidence of the quantity of water used, but any dispute on this matter between the council and the consumer is to be settled, on the application of either party, by a Court of summary jurisdiction. (S. 59, P. H. Act, 1875.)

There is a penalty of 40s. for injuring a meter. (S. 60, P. H. Act, 1875.)

Rents for water and for the use of meters can be recovered in the same manner as water rates. (S. 56, P. H. Act, 1875.)

N.B.—The above enactments of Waterworks Clauses Acts are incorporated with P. H. Act. (S. 57, P. H. Act, 1875.)

A rural district council who provide a stand-pipe for the supply of water can charge a water rate or rent for its use on the owners or occupiers of the houses within 200 feet of it. But if a house within these limits has a sufficient supply from other sources, no charge must be made unless the inmates of the house use the stand-pipe. (S. 9, P. H. Act, 1878.)

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